

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 15, 2015

SUBJECT	DESCRIPTION	PRESENTER
RULES REVIEW	Assignments	Vice Chairman Jim Patrick

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Martin

Sen Lakey

Sen Heider

Sen Lee

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 15, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Heider, Lee, Schmidt, and Ward-Engelking

ABSENT/ EXCUSED: Senator Lakey

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed everyone to the first meeting of the Commerce and Human Resources Committee (Committee). He welcomed Senators Heider and Lee to the Committee.

INTRODUCTION: **Chairman Tippetts** introduced the new page, Karessa Love, and asked her to tell the Committee about herself. **Karessa Love** said she is 17 years old, from Malad, Idaho, rides horses and is involved in high school rodeo and was elected rodeo queen last year. She likes quilting and cooking. She will be attending Utah State next year majoring in equine studies. Her goal is to eventually train with Clinton Anderson in Texas as a certified horse training clinician.

Senator Schmidt asked Karessa why she wanted to leave her horses and come to the Capitol. **Karessa** said she was involved in Know Your Government (KYG), and she felt that the Senate page position was a new opportunity to learn something. Originally, she was selected as a page for the House and was sponsored by Representative Gibbs. However, since the House had too many pages, she decided she would volunteer to go to the Senate.

Chairman Tippetts announced that starting on Tuesday, the Committee would have a full agenda. He thanked all for serving on the Change In Employee Compensation Committee (CEC). He welcomed and thanked Committee Secretary Linda Kambeitz for keeping track of him and for all of her work. He mentioned the Committee was privileged to receive rules from agencies, and a great deal of that time will be spent reviewing the rules. He thanked Vice Chairman Patrick for his work with the rules.

RULES REVIEW ASSIGNMENTS: **Vice Chairman Patrick** went over the 2015 Committee Rules Review spreadsheet. He reminded the Committee that anyone who wanted to trade rules assignments should inform both himself and Secretary Linda Kambeitz. **Vice Chairman Patrick** explained that the whichever Senator was assigned the rule would be responsible for the motion at the end of the Committee hearing.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 1:40 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 20, 2015

SUBJECT	DESCRIPTION	PRESENTER
Docket No. 07-0103-1401	Rules of Electrical Licensing and Registration - General	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0107-1401	Rules Governing Continuing Education	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0111-1401	Rules Governing Civil Penalties	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0204-1401	Rules Governing Plumbing Safety Inspections	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0205-1401	Rules Governing Plumbing Safety Licensing	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0206-1401	Rules Concerning Idaho State Plumbing Code	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0301-1401	Rules of Building Safety - Mechanical Ventilation	Steve Keys, Deputy Administrator, Division of Building Safety
Docket No. 07-0301-1402	Rules of Building Safety - Correction to Maximum Guest Room Amount	Steve Keys, Deputy Administrator, Division of Building Safety
RS23291	Relating to Workplace Safety	Kelly Pearce, Administrator, Division of Building Safety

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Martin

Sen Lakey

Sen Heider

Sen Lee

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 20, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt, and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m., welcomed everyone and went over the agenda.

PASSED THE GAVEL: Chairman Tippets passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

DOCKET NO. 07-0103-1401 **Rules of Electrical Licensing and Registration - General. Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. He said the Division of Building Safety (Division) and the Electrical Board (Board) determined, based on numerous complaints by the industry in recent years, that an increasing number of individuals already licensed in other jurisdictions as master and journeyman electricians enter Idaho and obtain apprentice registrations from the Division for the purpose of working on single jobs and leave the state upon completion of the job. This prevents Idaho apprentice electricians from filling these positions and furthering their education and experience in working towards their journeyman license. There is no basis for someone already recognized as a journeyman in another jurisdiction working in Idaho as an apprentice to "learn" to be a journeyman. By registering as an apprentice, this circumvents Idaho licensing requirements and allows these non-resident trade people to avoid testing for the Idaho journeyman license. This rule would require anyone who has previously been licensed in any jurisdiction as a journeyman or master electrician to disclose their licensure history to the Division upon application. It also prevents any such individual from obtaining an apprentice registration.

Mr. Keys pointed out that negotiated rulemaking was not conducted because the matter was formally designated as an agenda topic before the Board at four meetings over the last two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

Chairman Tippets referred to page 14, Section 011, and wanted to know if the Idaho Electrical Code (Code) was adopted. **Mr. Keys** replied the National Electrical Code (NEC) was adopted as the code in Idaho. **Chairman Tippets** stated it was more appropriate to refer to the code as the National Electrical Code. **Mr. Keys** said absent any statutory basis, this would have to be addressed in statute. **Chairman Tippets** and **Mr. Keys** discussed the eight hours of training. **Mr. Keys** explained training could be anything industry-related and not restricted to code.

MOTION: **Chairman Tippets** moved to approve **Docket No. 07-0103-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0107-1401**

Rules Governing Continuing Education. **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. He said the reason for adopting this rule was that the Board and Division have determined that imposing a less restrictive Continuing Education Requirement (CEU) would allow licensees a better opportunity to fulfill their education requirements. The Board and the Division determined that licensees would be better served by having the discretion to use eight hours of training directly related to the NEC, but not necessarily based on changes in the latest edition of the NEC. **Mr. Keys** pointed out this change was in line with requirements in other states which have reciprocal licensing agreements with Idaho. The proposed rule would allow an additional category of instruction in the area of the NEC-related training to qualify toward the continuing education credits. Currently, journeymen and master electricians are required to receive 24 hours of CEU training in each three-year licensing period. The 24 hours currently consists of 16 hours of code update covering changes included in the latest edition of the NEC and eight hours of industry-related training. This proposed rule would require eight hours of code update, eight hours of industry-related training, and eight hours of code-related training. It would also clarify that the required CEU hours must be completed in each three-year licensing period, as opposed to the period between updates of the NEC.

Negotiated rulemaking was conducted.

Senator Lakey said he noticed that on page 14 there was a CEU requirement of a three-year period between updates of the NEC, but now the CEU requirement is between license renewal. He assumed licenses were renewed every three years and the NEC did not necessarily follow that cycle. **Mr. Keys** indicated that was the case. At one time the Division skipped the code adoption cycle, and these changes were to clarify the requirements.

MOTION:

Senator Martin moved to approve **Docket No. 07-0107-1401**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0111-1401**

Rules Governing Civil Penalties. **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** said no specific provision existed in the rule to impose a civil penalty for failure to disclose the required information on an application for registration or certificate of competency. Requiring this disclosure would help prevent applicants, particularly those already licensed in other jurisdictions, from circumventing the journeyman licensure requirements in Idaho. This rule would establish a civil penalty for applicants who failed to disclose the required information on any Division electrical license application, specifically to include their licensure history and any licenses previously held in any state or jurisdiction.

Negotiated rulemaking was not conducted because the matter was formally designated as an agenda topic before the Board at four meetings over the last two years prior to rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

Vice Chairman Patrick and **Mr. Keys** discussed out-of-state contractors who registered for an apprentice position. **Senator Martin** talked with Mr. Keys about the frequency of penalties assessed last year compared with projected penalties for this year. **Senator Lakey** mentioned the failure to disclose the required information by an applicant and the disbarment of an individual in another jurisdiction for cause, pertinent to the State of Idaho granting them a license. **Senator Schmidt** wanted to know if this was a fee rule. **Vice Chairman Patrick** said he assumed the Division did not make that determination.

Senator Cameron said he thought there were some jurisdictions that were not recognized by the State. He wondered if a journeyman would be penalized if he did not disclose licensure in another state, and how would the Board handle a situation where someone failed to disclose they were a journeyman in a non-recognized jurisdiction. **Mr. Keys** stated Idaho would recognize a jurisdiction who has a credible licensing program rather than a registration program. Nevada does not have statewide licensure for journeymen. However, they do have a program geared more towards general contractors. **Mr. Keys** said the Board would look at intent. If the applicant did not disclose that they had a license in Nevada, for example, because it was not the same as that in Idaho, they would not be penalized.

Chairman Tippetts wanted to know if "failure to disclose" was on an application. He had a concern about the words "upon request" and was not sure he would interpret filling out an application as a request. **Mr. Keys** explained that from his perspective and that of the Board, if the question was specifically asked on the application and the prior licensure history was not disclosed, that was a request. **Chairman Tippetts** thought it would be more clear if it said, "who fails to provide the information", rather than including language where it sounds like they were making a formal request. That may be a change that could be made. **Mr. Keys** remarked that was a good suggestion.

Senator Lee questioned that as they talked about approved jurisdictions, was this going to capture the intent of the rule for all journeymen coming in at the apprentice level or how will this affect others who come from unapproved jurisdictions. **Mr. Keys** indicated the rule had provided additional disclosure and had discouraged journeymen and masters from Utah, for example, coming into the State and not applying for licensure. If a journeyman or a master already has the experience, all they have to do is take the exam.

Chairman Tippetts asked if they were focused primarily on people from out-of-state. If someone within the State had been licensed previously and was seeking to be re-licensed, and they fail to put their complete licensure history on the application, would they be subject to a penalty. **Mr. Keys** said what the Board was looking for was if an applicant answers "yes" to the fact they had been licensed in another jurisdiction, it would be incumbent upon the agency to get more information about the complete history and ask for further detail. **Chairman Tippetts** commented that he didn't think the language gave the agency that option. **Mr. Keys** said if the individual exercised good faith, the penalty would be minimal. **Chairman Tippetts** commented that he would like to have the Department comply with State laws and rules, rather than being lax.

Senator Lakey remarked he agreed with Chairman Tippetts in that the language really did not give discretion by using the word "shall". He suggested the word "shall" be changed to "may". **Mr. Keys** explained the language was that one "may" be subject to a civil penalty, but a penalty still has to be imposed. The imposition was at the discretion of the administrator. One was subject to the imposition of a civil penalty, but whether or not one was imposed, would be at the discretion of the agency. **Senator Lakey** said he would want to look at the language, but he read it

as "subject to" and he did not see where the Division had the discretion. **Mr. Keys** commented he did not have the language with him.

MOTION:

Chairman Tippetts moved to approve **Docket No. 07-0111-1401**. **Chairman Tippetts** explained he wanted to support the approval of this docket and wanted the Division to look at the issues that were discussed. If they felt they needed to make a revision they could bring the issue back to the Committee. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0204-1401**

Rules Governing Plumbing Safety Inspections. **Steve Keys**, Deputy Administrator - Division of Building Safety, presented this docket. **Mr. Keys** said the Idaho Plumbing Board (Board) had adopted the Cross Connection Control Manual (CCCM) as the installation standard. The CCCM was published by the American Water Works Association (AWWA), and was recently updated as reflected in the 7th edition of the manual published in 2012. This rulemaking adopts the 7th Edition of the CCCM published in 2012 by the AWWA in place of the now out-dated 1995 6th Edition.

Negotiated rulemaking was not conducted because this rule merely adopts the most recent edition of the CCCM. Although formal negotiated rulemaking did not occur prior to the promulgation of this rule, the matter was formally designated as an agenda topic before the Board at three board meetings over the past two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

Senator Lakey mentioned the rule looked like a wholesale adoption of a new manual covering changes from 1995 to 2012, and he questioned the lack of negotiated rulemaking if there was not an opportunity to put the Idaho "spin" on the rule. **Mr. Keys** replied this was a situation when the Department of Health and Welfare has jurisdiction over wastewater. His Division has jurisdiction up to the entry-point of the septic tank or other treatment situation on site. Anything beyond that falls under the jurisdiction of Health and Welfare. He stated the Department of Health and Welfare was already using the 2012 edition. **John Nielsen**, Program Manager, Division of Building Safety, stated that the CCCM was being used by everyone who tests backflow devices. There have been some formatting changes but no requirement changes. He said they wanted to be up-to-date with the current manual.

MOTION:

Senator Heider moved to approve **Docket No. 07-0204-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0205-1401**

Rules Governing Plumbing Safety Licensing. **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** said this proposed rule more clearly defines the qualifications and requirements necessary to become a licensed plumber in Idaho. It more clearly aligns the requirements for licensure from out-of-state applicants with in-state applicants, eliminating any advantage to out-of-state applicants and ensuring all applications are handled uniformly and consistently. Licensing requirements vary throughout the country, and this rule requires that out-of-state applicants meet the same requirements as plumbers who are trained and licensed in Idaho. The proposed rule more clearly establishes the schooling and work experience requirements necessary to obtain a plumbing journeyman certificate of competency (license), as well as the necessary requirements for applicants who come from other states. Similarly, it more clearly establishes the work experience requirements necessary to obtain a plumbing contractor license, including the requirement to obtain a journeyman license.

Negotiated rulemaking was conducted.

Senator Lakey commented that he looked at the journeyman requirements for the educational component and the work component. He wondered why there were four years of education required. He commented that even though four years were noted, the rule specified hours. **Mr. Keys** indicated the Board was currently working on how that was applied so that an individual would be able to move through schooling at their own rate by allowing for placement tests and challenges to the rule, just like challenging a college course. One of the barriers they discovered was the rigidity of the program. **Senator Lakey** wanted to know if the program was as rigid as the work experience requirement of four years and was it defined as 8,000 hours. Could this requirement be completed in less than four years. **Mr. Keys** replied the Board was looking for 8,000 hours of verified work experience.

Senator Schmidt noted there were multiple references to written examinations and wanted to know if they were on-line. **Mr. Keys** said the examination was in a written format on-line.

Senator Lee referred to page 26, Section 03.b, and asked if an individual could still apply for an apprenticeship if the applicant could obtain the easier certification by challenging the requirement. **Mr. Keys** indicated the Board was working to allow challenges to the educational requirement, and an applicant could come in and essentially test to the level of their competency. **Senator Lee** asked if an applicant could decide if they wanted to qualify for a particular license based on their preference. **Mr. Keys** said the applicant would have the ability to choose whether they had the knowledge to challenge a course. They would have the option of choosing whether or not to challenge the requirements or attend the four years of school.

Senator Lakey referred to page 26, Section 02.b, and wanted to know if there was a deadline for completion of the time period. **Mr. Keys** remarked the two-and-a-half years of experience was consistent with the requirements to become a contractor. **Senator Lakey** commented that applicants had to prove two-and-a-half years of experience as a journeyman to be a contractor. However, under item b, applicants have to also prove, once they become a journeyman, four years of experience for plumbing work of a nature equivalent to that of a journeyman. He asked if the requirement to be a contractor was another year-and-a-half for someone who has been licensed in a recognized jurisdiction. **Mr. Keys** explained the Board was looking for four years of experience from an applicant who had been in a non-recognized jurisdiction working as a journeyman or two-and-a-half years of experience from an applicant who had been working as a journeyman plumber in the State of Idaho. **Senator Lakey** asked if an applicant was performing work that was equivalent to Idaho standards, why were four years of work experience required? If their experience was inside of Idaho, the requirement was two-and-a-half years of experience. **Mr. Keys** said the reason the Board made that requirement was because they do not have confidence in a non-recognized jurisdiction. The Board does not have an issue if the state is a recognized one.

Chairman Tippetts explained Section 02.a was for an applicant for a contractor certificate of competency who had previously been licensed as a journeyman, and Section 02.b was for someone who has never been previously licensed as a journeyman. He stated that the requirement was four years of school and four years of work if an applicant had never been a journeyman, but if an applicant had been a journeyman, then the requirement was two-and-a-half years of experience. **Mr. Keys** acknowledged this was how he understood the rule.

Senator Lakey remarked that he didn't want someone coming from out-of-state

thinking they were being unfairly treated if they had to establish the journeyman qualification. If they had to establish equivalent work out-of-state, he expressed a concern that the applicant had to establish equivalency to what was done in Idaho. **Mr. Keys** explained that there have been contractors coming in from California. In California, a contractor's license was not required, but could be obtained by establishing oneself as a journeyman. If one's former employer in California verified an applicant was a journeyman, a contractor's license would be granted.

Senator Heider commented that if a person was a licensed journeyman, they have already exhibited their ability to pass an exam and work in that area. If a person was not a licensed journeyman, but may have worked in related fields, they should have more time because they have not actually passed the journeyman exam. He explained that the rule was saying that if an applicant had not been a journeyman in another state, then they must have four years of experience in doing the same thing that a journeyman would have done. If the applicant was already a licensed journeyman, then only two-and-a-half years would be required.

Senator Lee remarked that what has been described does not seem to stave off the initial problem. Would this still leave a gap with applicants coming into the State and not fulfilling the intent of what she sees as the bulk of this rule? **Mr. Keys** replied these rules were put into place in an attempt to assure that Idaho applicants for licensure were not being treated unfairly. The Board has had complaints by the trades in Idaho that they had stricter requirements than those who came in from other states. **Senator Lee** stated she wanted to make sure there was clarity on approved versus unapproved jurisdictions.

MOTION: **Senator Lee** moved to approve **Docket No. 07-0205-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0206-1401 **Rules Concerning Idaho State Plumbing Code.** **Steve Keys**, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** said this rulemaking updates the Idaho State Plumbing Code (IPC) to allow certain materials to be used for potable water distribution piping and building sewers. This would allow contractors and property owners greater flexibility when installing such pipes and sewer systems. It also eliminates several provisions of the code which can unnecessarily cost contractors and property owners additional expense. This rulemaking amends several provisions of the IPC. It allows for the use of Polypropylene (PP) of Raised Temperature (PE-RT) materials in building supply pipes and fittings as well as water distribution pipes and fittings, and Polyethylene (PE) for use in building drains. It eliminates the requirement for a plumber to test a shower pan for water-tightness. It also eliminates the requirement to use a device in bathtubs and whirlpool tubs that limits the maximum hot temperature of the water discharged. Finally, it eliminates the requirement in certain seismic areas to anchor or strap water heaters in place to resist against displacement due to earthquake motion.

Negotiated rulemaking was conducted.

Chairman Tippets pointed out the change on page 38, item 11, where the reference to Crosslinked Polyethylene (PEX) Tubing was removed and said he did not see any reference to PEX. He wanted to know if that was a product that had been used in the past and if it would be approved now. **John Neilson**, Division of Building Safety, Plumbing Program Manager, indicated item 11 was deleted when the Uniform Plumbing Code (UPC) was adopted. PEX was currently in table 6-4, number 14, and is included in the IPC.

MOTION: **Senator Schmidt** moved to approve **Docket No. 07-0206-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

Rules of Building Safety - Mechanical Ventilation. **Steve Keys**, Deputy Administrator, Division of Building Safety (DBS), presented this docket. **Mr. Keys** reported that energy code requirements related to the tightness of building envelopes have resulted in poor indoor air quality. The Board and a collaborative group recognized this problem last year when reviewing the adoption of new editions of the building codes and decided to delete the requirement for mechanical ventilation pending the acquisition of more data related to the problem. The industry and code groups have concluded upon reviewing the available data that mechanical ventilation should be required on all dwellings where the air changes average less than five changes per hour. The average new home testing in the past year was at 3.5 air changes per hour. This rulemaking amends several provisions of the 2012 International Residential Code (IRC). The estimated cost of providing supplemental ventilation is \$200 to \$400 per home. It reinstates an exemption for building permits for fences not over seven feet in height. It expands on the amendments to a table which establishes residential exterior wall fire resistance ratings and fire separation distances. Finally, it amends a provision requiring residential mechanical ventilation to ensure the exchange of air within the dwelling and creates an exception for such mechanical ventilation where the air infiltration of a home is already greater than an established amount (five air changes per hour when tested with a blower door).

Negotiated rulemaking was conducted.

Chairman Tippetts queried who decided that if there were fewer than five air changes per hour, a ventilation system would be required. **Mr. Keys** indicated the determination was through the Building Code Collaborative, which is a group assembled by the DBS coordinated with the building industry, code officials in various locations, the Division and other stakeholders in the mechanical Heating, Ventilation, Air-Conditioning (HVAC) industry. **Chairman Tippetts** wanted to know if research had been conducted on the health effects of having less air movement in a building. **Mr. Keys** replied the five air changes per hour were basically what the ICC reflected in the base code. Industry has begun to recognize there are negative impacts of not having enough air changes in the home environment which contributes to a build up of toxins. **Chairman Tippetts** asked **Mr. Keys** to verify whether there was a current requirement in International Code (IC) regarding the ventilation of five air changes per hour. **Mr. Keys** said the requirement could be higher at seven air changes per hour. **Chairman Tippetts** remarked that this provision in the rules was not an additional requirement and wanted to know why it was necessary. **Mr. Keys** reported that last year when the rule was brought forward, the data was not available. The Board determined that since they did not have the data they would not move forward. **Chairman Tippetts** wanted to know if approval of this rule would impose a new requirement. He wanted to know if a requirement was being duplicated that was somewhere else, such as the IC. **Mr. Keys** clarified this was an amendment to the code requirement from last year. **Chairman Tippetts** stated that the average new home tested last year indicated there were about three-and-a-half air changes per hour as opposed to the five minimum. Was testing specific to Idaho or were these tests done on a national or international level? **Mr. Keys** stated the figure reflected Idaho requirements through blower testing in various jurisdictions throughout the State.

Senator Martin wanted to know if townhouses were part of the testing. **Jason Blase**, City of Boise Building Official and a member of the Idaho State Building Code Board, stated that research was conducted over the year. Mechanical ventilation was a new requirement and the Board wanted to analyze the requirement and study the issue. Currently, there have been over 600 homes tested throughout Idaho. In Boise, 165 homes have been tested and 80 percent were under the five air change requirement. It has become very apparent that fresh air needs to come into homes, which has been done every day for commercial buildings.

Senator Martin wanted to know how this testing would be conducted. **Mr. Blase** replied testing is done on new homes as they are being built. Boise has a high number of Energy Star homes being built. A base requirement of Energy Star is the home has to be tested. They have received a lot of data from testing. A blower door can be installed in a home after the fact, but most of the time the door is installed during construction.

Senator Martin wanted to know if not having five air changes was a health problem. **Mr. Blase** indicated the energy codes have progressed requiring more sealing and caulking. In doing so, the air exchange in the house is much lower. A simple answer is a fresh air duct that comes from the return side of the furnace, horizontal and six to eight inches in diameter, which directs fresh air to the furnace and in turn brings air into the home. **Senator Martin** wanted to know how to test an existing home. **Mr. Blase** explained mechanical ventilation was required for all newly-constructed homes. If there is an air exchange between five and seven, the fresh air duct is not necessary because there is enough air infiltration. **Senator Heider** commented that if a building permit was drawn to install a new furnace or water heater, that would trigger an inspection on the home.

Senator Lakey referred to page 45, exterior walls, and wanted a clarification on the separation distance between an exterior wall and another wall. **Mr. Blase** explained the rule had to do with the property line of a home. The State has amended the requirement to three feet to make it consistent with the IC. **Senator Lakey** asked if the separation between the exterior wall and the property line was less than three feet, would the wall be rated as a fire-resistant wall with a one-hour test, according to the standards. **Mr. Blase** said that if the distance was less than three feet, the wall had to be fire-rated.

Chairman Tippets asked if the data the Board had was related to air exchange in a typical new home or was it related to the health effects of low air exchange in any home. **Mr. Blase** explained most of the data related to air exchange. **Chairman Tippets** wanted to know if Mr. Blase had any information on what the health effects would be on a person who was subject to low air flow. How was the risk assessed for occupants of a home that only had three-and-one half air exchanges compared with a home that had five? **Mr. Blase** said the information was on the internet. He pointed out there were toxins from gas appliances, moisture, carpet, furniture and paint.

Senator Lee stated the increase in cost for a new home was negligible, but wondered what the cost would be to the consumer. **Mr. Blase** said the estimated cost would be \$250 to \$350 for a fresh air duct installation.

MOTION:

Senator Martin moved to approve **Docket No. 07-0301-1401**. **Senator Heider** seconded the motion.

Chairman Tippets remarked he was uncomfortable imposing the cost on a new home buyer. He said he was not sure of the health risk without having a better understanding of the issue. Absent additional information, he would be voting "nay."

The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1402**

Rules of Building Safety. Steve Keys, Deputy Administrator, Division of Building Safety, presented this docket. **Mr. Keys** reported this amendment of the 2012 edition of the International Residential Code (IRC) was the result of negotiated rulemaking and the deliberations of a collaborative group within the building industry that included local building officials, code development officials, board members and other interested stakeholders that occurred in 2013. This amendment corrected an error to the same rulemaking submitted last year. This amendment correctly establishes the maximum guestroom amount as five rooms instead of three, which was submitted last year in error. This rulemaking would amend the IRC to allow owner-occupied lodging house occupancies (bed and breakfasts) with five or fewer guestrooms to be constructed or remodeled in accordance with the IRC instead of the commercial building code. It also would allow such bed and breakfasts to be operated without the installation of fire sprinklers.

Because this rulemaking corrected an error from a rulemaking from the previous year (2014 Legislative Session), it was necessary to make the rule effective as soon as possible to confer a benefit to building contractors and operators of owner-occupied lodging houses (bed and breakfasts).

Negotiated rulemaking was not conducted because this rulemaking was negotiated and submitted as rulemaking in a previous legislative session. Due to a textual error in that rulemaking, it is being corrected and resubmitted this year.

Senator Martin stated he had noticed that on page 54, the installation of smoke alarm and carbon monoxide alarms was deleted, and he wanted to know why. **Mr. Blase** said there was a lot of discussion in getting this approved by the Board, but it was still assumed that the smoke detectors and carbon monoxide alarms would be installed and that requirement was covered in another section of the code. **Senator Martin** commented he thought it especially important to have a smoke alarm and carbon monoxide detectors installed in a bed and breakfast.

MOTION:

Chairman Tippetts moved to approve **Docket No. 07-0301-1402**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

RS 23291

Relating to Workplace Safety was presented by Tom Limbaugh, Commissioner, Industrial Commission (Commission) and Kelly Pearce, Administrator, Division of Building Safety (DBS). **Tom Limbaugh** said the language for this RS was worked on jointly by the DBS and the Idaho Industrial Commission (Commission) over the past year.

The Commission's Advisory Committee formed a Workplace Safety Subcommittee to work through these proposed changes. The invited members represented labor, self-insured employers, insurance companies, the State Insurance Fund, the logging industry, the Association of Idaho Cities, the Idaho Association of Counties, the Idaho Association of Highway Districts, the Idaho Retailers Association, the National Federation of Independent Business, the Idaho Association of Commerce and Industry, the Idaho Hospital Association, the Legislative Budget Office, the Division of Financial Management, the DBS and the Commission.

Mr. Limbaugh said the Industrial Accident Board (Board) was created in 1917 by the Idaho Legislature. The Board was given authority over workplace safety. In 1971, as part of a major recodification of the workers' compensation laws, the Legislature again assigned the responsibility over workplace safety to the Industrial

Accident Board renamed the Industrial Commission. Around the time of the 1971 recodification, the United States Congress enacted the Occupational Safety and Health Act (OSHA). Since Idaho has no state workplace safety and health program under a plan approved by the U.S. Department of Labor, all private sector employment is covered under OSHA. As a result of federal preemption in this area, current Idaho law incorrectly vests the Commission with authority over private workplace safety. However, state and local government workplaces are excluded from federal coverage under OSHA.

This legislation clarifies the scope of safety inspections and programs, and transfers all related responsibilities to the DBS, the majority of which they now hold. Further, this proposal identifies the continued use of the Commission's Administration Fund to fund DBS inspections of public buildings, public schools and the logging safety training programs and permits the Administrator to issue a stop work order where evidence reveals a logging workplace safety condition that poses an immediate threat of serious bodily harm or loss of life to employees or members of the public. It provides for enforcement of that order by the Attorney General and makes a knowing violation of such a safety order a misdemeanor.

Mr. Limbaugh stated the Administrator of the DBS was also required to promulgate rules adopting minimum safety standards and procedures for conducting logging safety inspections and logging safety training. This legislation also authorized the Administrator of the DBS to conduct safety inspections of buildings owned or maintained by other political subdivisions of the State upon receipt of a written request from the governing body of that political subdivision. Inspections would be subject to the availability of DBS resources and an agreement by the political subdivision to pay the DBSs current fees. The findings of these inspections shall be reported to the governing body of the political subdivision. The Administrator may also promulgate rules adopting minimum safety standards and procedures for conducting such inspections, as well as the fees for performing the same.

Kelly Pearce said he concurred with Mr. Limbaugh's remarks. The changes had gone through an extensive negotiated hearing process throughout the industry. Statutorily, the responsibility would be transferred to the DBS. This proposed RS eliminated some heavy sections of code, which gave the responsibility to the Commission almost jointly with OSHA for workplace inspections. **Mr. Pearce** said neither the entities nor the DBS should be involved in these types of inspections. He noted in the past the DBS would conduct inspections of all political subdivisions including cities, counties and every other conceivable subdivision. All of that has been eliminated through this proposal. If an entity wanted to have a safety inspection process or training program conducted by the DBS, it would be upon written request of that entity to the DBS. The DBS charges an hourly rate and makes a written report to the entity.

Senator Martin asked about page 3 relating to logging operations when there was an immediate threat of serious bodily harm or loss of life to any person. The Administrator has the power to shut down the operation, and it is important that both sides of the issue be considered. **Mr. Pearce** replied he thought the industry would be there to testify on behalf of that section at the next hearing. The industry requested this item.

MOTION: **Senator Ward-Engelking** moved to send **RS 23291** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:55 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 22, 2015

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes January 15, 2015	Vice Chairman Patrick
<u>RS23253</u>	Relating to Real Estate - Language Relating to A Fee	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
<u>RS23272</u>	Relating to Real Estate - Relating to the Term of A Course Provider's Certification and Expiration Date	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
<u>RS23292</u>	Relating to Real Estate - Relating to Fee Splitting	Jeanne Jackson-Heim Executive Director, ID Real Estate Commission,
<u>RS23237</u>	Relating to Real Estate - License Law	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
<u>RS23231</u>	Relating to Real Estate - License Law	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
DOCKET NO.		
<u>33-0101-1401</u>	Rules of the Idaho Real Estate Commission	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
<u>33-0102-1401</u>	Rules of Practice of the Idaho Real Estate Commission Governing Contested Cases	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
<u>01-0101-1401</u>	Idaho Accountancy Rules - License Renewals	Kent Absec, Executive Director, ID State Board of Accountancy
<u>01-0101-1402</u>	Idaho Accountancy Rules - Modify Rule 606.01 and Annual Registration	Kent Absec, Executive Director, ID State Board of Accountancy

<u>09-0106-1401</u>	Rules of Appeals Bureau - Appeals	Amy Hohnstein, Chief Appeals Bureau, Department of Labor
<u>09-0104-1401</u>	Unemployment Insurance Benefit Fraud Overpayment	Joshua McKenna, Benefits Bureau Chief, Department of Labor
<u>09-0130-1401</u>	Unemployment Insurance Benefits Administration Rules	Josh McKenna, Benefits Bureau Chief, Department of Labor

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 22, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt, and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m.

APPROVAL OF MINUTES: **Senator Patrick** moved to approve the Minutes of January 15, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 23253: **Relating to Real Estate - Language Relating to a Fee.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), mentioned realtors were "on board" with this legislation. She indicated the Commission did not pursue legislative changes without buy-in from the industry. Any changes are discussed in advance of submission, and the Commission works in a collaborative manner to develop the proposed language.

Ms. Jackson-Heim said the wording referred to outdated language for a program from the days when the Commission administered its own group errors and omissions insurance. Currently, the Commission contracts with a group insurance provider to administer the program. The Commission has not collected a fee for a number of years. The Commission did not anticipate administering the insurance program in-house nor collecting a fee in the future.

MOTION: **Senator Cameron** moved to print **RS 23253**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 23272: **Relating to Real Estate - Relating to the Term of a Course Provider's Certification and Expiration Date.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said this bill relates to certified instructors and providers. Instructors teaching pre-license, post-license and core classes must be certified. Presently, there are 98 active certified providers and 57 active certified instructors. They renew their certifications throughout the year, based on when they first applied for certification. This has been very confusing and labor intensive for staff. What this bill does is change the staggered two-year renewal dates for these certifications to an annual renewal date on the same day for everyone, which the Commission proposes to be June 30. Most certified instructors are certified to teach the core course. This is a new course effective July 1 of every year. Instructors are required to recertify annually on this date.

This change would result in less confusion for real estate educators and promote greater efficiency at the Commission. While there would be a very small increase in the fees paid by the certified providers and a few instructors, all of them have been notified of this proposed legislation. There has been no negative feedback. The renewal fee is \$50 for a provider and \$25 for an instructor.

Senator Martin wanted to know if there was a conflict in moving the renewal time from two years to one year. He asked if on line 20, the reference should be changed from two years to one year. **Ms. Jackson-Heim** noted that was not necessary for providers since they were tracked by the Commission.

Senator Lakey indicated he liked the idea of a one-year renewal, but he cautioned about charging a fee. **Ms. Jackson-Heim** answered the fee was a renewal fee and not an application fee. Currently, the fee is included in the registration fee for training.

MOTION: **Senator Schmidt** moved to print **RS 23272**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

RS 23292: Relating to Real Estate - Relating to Fee Splitting. **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), stated this was a bill that clarified real estate activity payments to licensees. The license law states that unlicensed people or entities cannot receive fees for brokerage activity. The law also requires any licensee to receive real estate activity payments through his or her designated broker. There is a narrow exception in the law, where payments to unlicensed entities are allowed for licensees who form limited liability corporations (LLCs) or other business entities for tax purposes or who form teams with other licensees in their office. The broker is allowed to pay fees to these unlicensed entities because the fees were earned by the owners of the entities.

Ms. Jackson-Heim pointed out as with most laws, someone has identified a loophole, and in order to close that loophole, the Commission proposed a change. The proposed change maintains the exception and allows an unlicensed entity to be paid for real estate brokerage activity, but it clarifies that one of the owner licensees must have done the work for which the fees are paid. The language also makes clear that the owner licensee receiving the payment must be licensed under the broker making the payment.

She specified the second change was on page 3, line 12, which allowed the unlicensed entity to transfer those payments to the licensee, where ordinarily they would have to come directly from the broker.

MOTION: **Senator Martin** moved to print **RS 23292**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 23237: Relating to Real Estate Law . **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said the license law authorizes the Commission to deny, expire, suspend or terminate a license on the grounds the license application fee was paid using a non-sufficient fund check. This legislation updates the law to add "any other type of insufficient payment" as grounds to expire, suspend or terminate a license.

MOTION: **Senator Heider** moved to print **RS 23237**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 23231:

Relating to Real Estate - License Law. **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said this RS encompassed quite a few small clean-up items. These items were identified during a review by the Commission of the license law and rules. On page 1, line 32, a spelling error was corrected. On page 2, line 29, there was a grammatical correction. On page 5, lines 24-25, the Commission wants to change the word "country" to "jurisdiction", to be more inclusive of the various governmental entities. **Ms. Jackson-Heim** reported some licensing jurisdictions were not countries, they were emirates, for example. On line 30, the Commission proposed adding the word "assessment" to allow for evaluating course completion in ways other than an exam. For example, there might be an activity or a short answer essay. **Ms. Jackson-Heim** described the references on page 7, lines 25-27, to challenge exams was deleted. Last year, some similar changes were approved, but a couple of references were omitted. On page 9, line 18, there was a change to the term, "business days" for consistency. "Business days" was a defined term in real estate license law. Clarification was added on line 21, "that the providers must submit their students' legal names when turning in their course completion lists" so the education records would match with the correct applicant.

On page 10, line 30, **Ms. Jackson-Heim** clarified what happened when a provider or school was no longer certified with the Commission to offer real estate education. She pointed out this language currently did not match the language for certified instructors and courses, and the Commission wanted to make the language consistent. On the same page, line 41, clarification language was inserted to say that post license instructors were certified. This was an oversight from last year's legislation regarding real estate continuing education requirements. On page 11, line 9, the words "post license" were added for the same reason. She said on page 12, line 32, the term "final exam" was changed to "assessment" to allow for flexibility. Lines 39-41 deleted references to challenge exams. The same applies to the deletion of language on page 13, lines 4-7. On page 13, in order to make language consistent, starting on line 19, several of the same changes throughout that section were made. The Commission proposed deleting the word "office" in several places on page 13 to reflect the correct term of branch manager. Also on page 13, beginning on line 44, the same requirements for being absent from the office apply to a branch manager as well as to a designated broker.

On page 15, line 7, an offer to purchase must include the date it was signed. And, finally, on page 16, an entire section was deleted that was incongruous with other sections and did not make sense. The license law requires anyone offering courses for real estate licensees to be certified with the Commission.

MOTION:

Vice Chairman Patrick moved to print **RS 23231**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review being heard.

**DOCKET NO.
33-0101-1401:**

Rules of the Idaho Real Estate Commission. **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), presented this docket. The Commission did a thorough review of the administrative rules and identified a number of areas for clean-up. The first change removed a reference to nonresident and reciprocal licenses. This type of license category was eliminated from the license law quite a few years ago and the Commission no longer distinguishes between residents and non-residents. Every Idaho licensee gets the same type of license regardless of where he lives or works.

Ms. Jackson-Heim stated in the paragraph related to failure to maintain insurance, the number of days were "business" days, as the term was defined in the license law. Subparagraph 2 has been deleted completely because it was outdated, unnecessary, and incorrect. Rule 304, at the bottom of page 167 and going through page 168, was deleted in its entirety. This rule was not enforceable, and it was more in the nature of guidance. The Commission felt broker supervision requirements were adequately stated in the Idaho Code. To the extent more clarification was needed, the Commission worked on a checklist for use by licensees and enforcement staff that incorporated this information. The Commission's customary approach to rulemaking was to first consult with industry representatives to discuss any proposed changes; that was the process the Commission followed with this docket. The Commission also invited public testimony and conducted a hearing on these proposed changes, and there were no comments.

Senator Cameron asked if the Commission had a revocation procedure. **Ms. Jackson-Heim** responded the clause was in license law. They discussed the idea that everyone had to carry errors and omissions insurance. Until an agent could show proof of insurance, the Commission could put the agent on inactive status. Once proof of insurance is established the broker can add the agent back as part of the company and there is no fee. **Senator Cameron** wanted to know what the procedure was in the event someone was incapacitated for a period of time and unable to comply with the law as outlined, but recovered and wanted to reactivate their license. **Ms. Jackson-Heim** stated the broker could put the license on inactive status at the request of the agent. The broker could reactivate the license when the agent became active again, provided they had proof of errors and omissions insurance and completed the last year of continuing education. They also discussed the idea that if someone who was incapacitated wanted to maintain their license in holding status as inactive, they would have to pay all of the fees every two years.

Senator Lakey wanted to know where it stated "an agent has to be adequately supervised" was omitted, where else that would appear. **Ms. Jackson-Heim** said the language was in Idaho Code § 54-2038.

Senator Martin wanted to know what happened to commissions that were earned if a license was suspended due to an agent not providing proof of omissions insurance. **Ms. Jackson-Heim** answered that licensees who had a license on inactive status were allowed to receive their commissions that were earned while they were actively licensed.

MOTION:

Senator Schmidt moved to adopt **Docket No. 33-0101-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
33-0102-1401:**

Rules of Practice of the Idaho Real Estate Commission Governing Contested Cases. Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission (Commission), presented this docket. She stated this section of rules governs the process for disciplinary actions at the Commission and are similar to the rules of civil procedure in court cases. She pointed out these rules were originally adopted in 1993 and were written through a collaborative process with the Realtor Association. The first change was to add the words "mountain time" to clarify the Commission's office hours.

Ms. Jackson-Heim said the definitions of "chairman" and "license" were deleted, as these two terms were not used anywhere within the language of this section of the rules, and the definitions were unnecessary. She pointed out on page 172, Section 104, there were more substantive changes to the rules, which allow the Commission to serve documents electronically. The revised language has been written to closely follow the Attorney General's rules. A later change will address service of documents by other parties. The Commission did not feel the need to specify how payments were made. This section was also outdated because it did not allow for electronic payments or credit cards.

Ms. Jackson-Heim mentioned at the top of page 173, a sentence was deleted because the language was unnecessary and contradictory to the process established in the license law for pursuing a violation. The changes to Rule 209 related to service of documents by other parties for a contested case proceeding. This language was proposed to allow electronic service of documents. Finally, Rule 303 contains the proof of service language which must be included in all filings. This language was being revised to reflect the options for electronic service described elsewhere in the rules.

The Commission consulted with industry partners and held a hearing on these changes. The Commission received no comments.

Chairman Tippets and **Ms. Jackson-Heim** discussed serving an agent at their place of business or home through regular mail and if they were a State employee through the statehouse mail. **Ms. Jackson-Heim** reported it was the responsibility of an agent to keep the Commission informed of their current address and contact information. She said this did not always happen and serving an agent who was a State employee through the statehouse mail was one more mechanism.

Senator Schmidt and **Ms. Jackson-Heim** discussed the phrase "may personally serve an agent with a summons via regular mail." **Senator Schmidt** indicated he would like to see a correction of the wording at a future date.

Senator Martin wanted to know why Section 106 was reserved and not deleted. **Ms. Jackson-Heim** explained there were other sections of the rule that followed that otherwise would have to be renumbered.

Senator Lakey stated that once the parties appeared, then service could be electronic from that time forward whether the agent consented or not. If they had not appeared, then they would have to agree to electronic service. He wanted to know if there was any discussion about obtaining consent once the agent had already appeared; so they could be served electronically. **Ms. Jackson-Heim** said the Commission did not discuss that. There are very few unrepresented parties in these proceedings. She stated that if all the Commission had was an email address, they must do the best they could. The purpose of this rule was to give the Commission some more tools to utilize.

MOTION: **Senator Schmidt** moved to approve **Docket No. 33-0102-1401**. **Senator Ward-Engelking** seconded the motion.

Senator Lee stated she was in favor of this rule, but was uncomfortable with using statehouse mail as notification. **Senator Heider** commented he was a real estate broker before becoming a Senator. If there was a reason for the Commission to be able to communicate with him, it was fitting to add statehouse mail to the rule. **Senator Lakey** mentioned he would like to have serving a summons by mail versus personal service re-examined by the attorneys.

The motion carried by **voice vote**.

DOCKET NO. 01-0101-1401: **Idaho Accountancy Rules - License Renewals**. **Kent Absec**, Executive Director, Idaho State Board of Accountancy (Board), explained the Board was a seven-member board appointed by the Governor, with one office in Boise. Since 1917, the Board has licensed and regulated Certified Public Accountants (CPA) and Licensed Public Accountants (LPA) in Idaho. A director and three staff members assist the Board in carrying out its responsibilities. The Board strives to act swiftly in protecting the public whenever an issue arises with a possible impact upon the citizens of Idaho. Currently, there are approximately 2,700 CPAs and LPAs licensed in the State.

The first pending rule amends Rule 502.01, Section (b), to reflect a new extension deadline date of April 30 for submission of a licensee's annual Continuing Professional Education (CPE) courses. CPE is required for CPAs and LPAs to maintain their professional competence and to provide quality professional services. Licensees are responsible for complying with all applicable CPE requirements, rules and regulations of state boards of accountancy, as well as those of membership associations and other professional organizations. Each year, licensees must complete their required number of CPE credits or hours for the calendar year by December 31 and are asked to report those credits using the prescribed reporting process to the Board by January 31.

Mr. Absec pointed out the Board may grant extensions of time for the completion of the CPE requirement where reasons of health, as certified by a medical doctor, prevent compliance by the licensee or other good cause exists. Licensees asking for an extension under these conditions must apply on the reporting form for the year in which the extension is sought, and within the time period set for CPE. A penalty of no more than 50 percent of the CPE hours may be assessed for extensions. In these cases, the Board has asked for the rule to be modified in order to have the licensee be required to complete the CPE hours and any assessed penalty no later than April 30. The current extension deadline is May 31.

Mr. Absec mentioned the reason for the request was to modify the rule to include determining a licensee's eligibility for renewal upon completion of the prior period CPE requirement. Licenses run from July 1 to June 30. Once an extension has been submitted to the Board office, staff reviews the submitted report and certificates for the courses taken to verify the licensee has met the CPE requirement for the year in question. With many licensees waiting until close to the end of the extension period to submit their reports, they are left with very little time to make any adjustments. He cited an example that a licensee may be required to replace a submitted course because it did not meet the qualifications of the Board before the annual renewal period deadline without a late fee expiring. By changing the extension deadline to an earlier date, it would help the licensees be in a better position to find and take any additional courses, resubmit the needed information and renew their license in a timely manner. He noted that in the last six years the Board had seen an average of 60 licensees requesting an extension. Historically, a

majority of these licensees submit their required reports and the documentation necessary for the extension close to the May 31 deadline. This makes it difficult for the staff of the Board to process these extensions, communicate with the licensees if any additional courses need to be taken and give the licensees ample time to get the needed requirements completed prior to July 1. Licensees and the general public will benefit from knowing there are guidelines for CPE extensions, which not only help promote a quality and effective learning experience, but also aids a CPA in meeting their CPE requirement.

This rule has been published through the Office of Administrative Rules. Legislative Services has reviewed the proposed rule and has no objections to the change. No negative feedback has been received from stakeholders or the general public or from the Idaho Society of CPAs.

MOTION: **Chairman Tippetts** moved to adopt **Docket No. 01-0101-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 01-0101-1402: **Idaho Accountancy Rules - Modify Rule 606.01 and Annual Registration**. **Kent Absec**, Executive Director, Idaho State Board of Accountancy (Board), indicated the Board wanted to amend this rule to state that only firms performing any of the services set out in Rule 602 need to annually register with the Board. He said this pending rule would be a reflection of the practices the Board currently uses and would bring it in unison with those firms that must participate in a Peer Review Program (PRP) as outlined in Rules 602 and 603. The Board was making a change that should have been submitted in the past, but was missed. Rule 602 states "any firm that issues reports on accounting and auditing engagements, including audits, reviews, compilations, and prospective financial information shall participate." A licensee who issues compilation reports through any form of business other than a firm shall participate in the Peer Review Program". However, he pointed out "a firm that does not perform any of the services set out in Rule 602 was exempt from peer review." The Board, over the past few years, has only required those firms who offer the services stated in Rule 602 to register with the Board on an annual basis. This rule change would bring into alignment those firms performing protected services and were required to register as the same group who was performing the protected services. This change would make it easier for stakeholders to understand if they were a firm who provided the services in Rule 602, they must both register their firm with the Board and be a participant in the PRP.

Mr. Absec said this rule has been published through the Office of Administrative Rules. Legislative Services has reviewed the proposed rule and there were no objections to the change. No negative feedback was received from stakeholders, the general public or from the Idaho Society of CPA's.

Chairman Tippetts asked for clarification on the rule. He stated that for a period of time, a firm follows the rule, regardless of whether or not they perform services. However, the firm was required to submit the form referenced in the rule. **Mr. Absec** explained the Board was not requiring those individuals who did not perform those protective services, to file a registration for their firm. This rule would put into place the practices that are currently being used. **Chairman Tippetts** said he often heard the rule had been changed without changing the statute first. He commented that in the future, the rule or the statute should be changed before changing the practice whenever possible.

MOTION: **Senator Heider** moved to adopt **Docket No. 01-0101-1402**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0106-1401: **Rules of Appeals Bureau - Appeals.** Amy Hohnstein, Chief Appeals Bureau, Department of Labor (Department) said the current rule allows appeals to be filed in any of the 25 Job Service Offices throughout the State. Those appeals are collected and routed to the Department's Appeals Bureau in Boise. The rule change would prevent appeals from being delayed or misdirected by requiring them to be filed by mail or electronically transmitted directly to the Department's Appeals Bureau. Negotiated rulemaking was conducted.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0106-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0104-1401: **Unemployment Insurance Benefit Fraud Overpayment.** Joshua McKenna, Benefits Bureau Chief, Department of Labor (Department), said the rule change would reflect the legal standard used by the Idaho Supreme Court in unemployment insurance benefit fraud cases by explaining that to willfully make a false statement or to willfully fail to report a material fact in order to obtain unemployment insurance benefits only required a purpose or willingness to commit the act or make the omission. It did not require an intent to violate the law. Negotiated rulemaking was conducted.

Senator Schmidt questioned why intent to violate the law was not required. **Larry Ingram**, Compliance Chief, Department, answered that was the standard from the Idaho Supreme Court that has been used since 1979, but never publicized. **Senator Schmidt** clarified the lack of intent was understood, but it would now be in writing. **Chairman Tippetts** asked assuming a person admitted to intentionally making a false statement, were they using it as a defense that they didn't intend to break the law? **Mr. Ingram** replied that intent was being used as a defense.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0104-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0130-1401: **Unemployment Insurance Benefits Administration Rules.** Joshua McKenna, Benefits Bureau Chief, Department of Labor (Department), presented this docket. He said the rule was being changed to reflect how the Department currently processes unemployment insurance claims. He explained this rule change would delete references to "mailed" and "in person" claims because they were no longer used by the Department. Instead, claims are filed over the internet, or in special circumstances, by telephone.

Chairman Tippetts mentioned the rule was a pending rule and would become effective at the end of the Legislative Session if approved. He wanted to know if the provisions in this rule were currently effective. **Mr. McKenna** explained the rule was not effective today. Claims were handled via the internet and over the telephone. He said claims were not being handled in person now. **Chairman Tippetts** pointed out the change had not been approved, and yet, the Department was not currently allowing in-person filing or mailing of claims. The Department had changed the process before they had the authority in rule to do so. **Chairman Tippetts** remarked the Department had violated their own rules, and then after the fact, had to ask the Committee to approve what the Department was currently doing. **Mr. McKenna** said he understood the point and would pass the information on to staff to make sure they were in compliance. **Chairman Tippetts** asked what would be the impact on the Department if the Committee chose now to reject this rule. **Mr. McKenna** explained the Department would have to look at the internal process of handling unemployment claims. **Chairman Tippetts** wanted to know about the cost and the disruption to the process in making the transition of accepting claims at offices around the State or mailing the claims, as opposed to making claims through the internet. **Mr. McKenna** responded the rejection of this rule would be very disruptive. During the high volume periods, not all of the claims would be handled

without the internet process. **Vice Chairman Patrick** inquired whether there were computer terminals available at local unemployment offices. **Mr. McKenna** said terminals were set up at local offices, libraries or wherever there was internet access. **Chairman Tippetts** said prior to eliminating the option of filing a claim at a local office or via mail, electronic filing was already allowed by the Department. He clarified that what this rule said was a claim could be filed electronically, but could not be dropped off at the office or mailed. **Mr. McKenna** said that was correct.

Senator Ward-Engelking remarked the Department was assuming every single person knew how to file a claim electronically. **Mr. McKenna** disclosed there were employees available at the different offices to assist applicants with electronic data entry and available by phone. He said staff worked closely with the local libraries to make sure applicants had access.

Senator Lakey commented about the language on page 69, Section 3, namely, new claims may be filed by phone, which may create potential documentation problems. His concern was with the Department's discretion. Usually, when a claim was filed there was some type of legal process based on the date of the claim. He felt there should be a deadline. He said that he did not think a claim should be discretionary when submitted by phone. **Mr. McKenna** indicated this section of the rule was for someone with a disability or limited English proficiency. **Senator Lakey** said the decision should not be discretionary.

Senator Martin indicated he also had a problem with that language. He gave the example of a person applying by phone who was accepted, but his friend called on the phone and was denied. He indicated it sounded like the Department was deciding, but there was no criteria. **Mr. McKenna** said discretion was put into the rule to handle special circumstances. He stated his Department was bound by the United States Department of Labor to provide equal access to all customers.

Senator Martin remarked he had many questions about this rule. Was it appropriate the rule be held?

MOTION: **Senator Martin** moved that **Docket No. 09-0130-1401** be held indefinitely with the understanding the docket would be placed back on the agenda. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:45 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 27, 2015

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION	Your Health Idaho	Pat Kelly, Executive Director
DOCKET NO.		
<u>17-0204-1401</u>	Industrial Commission Workers' Compensation Law - Benefits	Matt Vook, Benefits Analyst
<u>17-0206-1401</u>	Industrial Commission Employers' Reports	Matt Vook, Benefits Analyst
<u>17-0208-1401</u>	Industrial Commission Miscellaneous Provisions	Matt Vook, Benefits Analyst
<u>17-0211-1401</u>	Industrial Commission Under Workers' Compensation Law - Security for Compensation - Self Insured Employers	Jane McClaran, Financial Officer
<u>17-0209-1401</u>	Industrial Commission Medical Fees	Patti Vaughn, Medical Fee Analyst
<u>17-0209-1501</u>	Industrial Commission - Medical Fees - Temporary Rule	Patti Vaughn, Medical Fee Analyst
<u>17-0501-1401</u>	Industrial Commission - Rules Under the Crime Victims Compensation Act	George Gutierrez, Bureau Chief

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 27, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed everyone to the Committee.

PRESENTATION: **Pat Kelly**, Executive Director, Your Health Idaho (YHI) gave an update on accomplishments as a state-based marketplace and the transition in running a technology platform this fall. The 2014 Annual Report will be published at www.yourhealthidaho.org. **Mr. Kelly** said that in 2010, Congress passed the Affordable Care Act (ACA) which required each state to establish a health insurance exchange or have the federal government run one in the state. To limit federal intervention in Idaho, to maintain control of Idaho's health insurance market, and to save Idahoans money, the Legislature voted to create a state-based exchange (Exchange) in Idaho in March of 2013. That marketplace is now known as YHI. YHI is meeting the goals set forth in H 248, that were placed in front of the YHI Board (Board) and staff less than two years ago. YHI is preventing federal intervention in Idaho and is providing a much needed resource to thousands of Idahoans who want health insurance. Most importantly, by establishing local governance, YHI has been able to run a more efficient exchange than the federal government, which has saved money while still fulfilling the needs of YHI customers. In comparison to states where the federal government is running an exchange, Idaho is benefiting in many areas, but in particular because the Board sets the requirements for plans on the Idaho Exchange. At the recommendation of the Idaho Department of Insurance (DOI), the Board certifies that all plans sold on the Exchange meet those requirements.

Mr. Kelly reported that agents and brokers are the primary resource for consumers, and there were already over 1,000 licensed agents and brokers helping Idahoans find the right plan to fit their needs. In federally-managed states, agents and brokers have limited roles. Consumer assisters are chosen and make consumer protection a top priority. Organizations are hand picked who can best represent and help Idahoans. Enrollment counselors undergo a rigorous background check. In federally managed states, the federal government selects and funds organizations to assist consumers.

Mr. Kelly said the initial assessment fee is 1.5 percent. In federally-managed states, assessment fees are higher. The Exchange is governed by a board of Idahoans. The Board determines how funds are used and how the marketplace is implemented. The Exchange can respond quickly to the needs of consumers, whereas in federally-managed states, residents must go through federal bureaucracy. The Exchange is a great example of Idahoans helping Idahoans. **Mr.**

Kelly commented what has been accomplished over the last two years to benefit thousands of Idahoans is remarkable.

When the Exchange was established there was a 19-member board of volunteers with the duty to keep control of the Exchange. There was no staff, funding, infrastructure, governance, office space or computers, and there was a deadline of only six months to start up an Exchange. There was so little time that it was clear the Exchange had to borrow the healthcare.gov technology for the first year. They did so while maintaining their status as a state-based exchange and the benefits afforded to the Exchange. The benefits of that status are about more than running their own technology system. Maintaining the state-based exchange status allowed the Board to keep control of the decisions about the Exchange and keep costs low; keep the federal government out of Idaho's insurance market; and maintain a primary role for agents and brokers in selling health insurance, which allows the Exchange to respond quickly to the needs of consumers even when technology is not working.

In fact, **Mr. Kelly** said, the foundation for success was the ability to maintain a primary role for the real experts on health insurance, which are the agents and brokers. They have been pushed aside in other states where the federal government operates an exchange. Agents and brokers have been trusted resources in communities across Idaho for decades and are the best front line of support to help consumers navigate through the plan options. Agents and brokers make the system work and more than half of the enrollments through YHI were assisted by an agent in-person assister.

Most importantly, in year one, the Exchange worked for 76,061 Idahoans who enrolled in coverage between October 1, 2013 and March 31, 2014. The State saw the third highest enrollment per capita in the country. This was in large part due to having agents and brokers available for citizens when the healthcare.gov technology did not work or when they needed help understanding the tax credit process or picking a plan. With a federal exchange, the agents and brokers would not have this primary role and those that chose to use the Exchange would not have had the correct local resources available to make an informed decision. The first open enrollment period in April was very successful. The rest of 2014 and the beginning of 2015 has been one of challenge, transition and significant accomplishment.

Mr. Kelly reported that in year two, in addition to continuing to maintain control and provide consumers with the tools and resources they needed to make an informed decision, YHI has become the first health insurance exchange in the nation to successfully migrate from the federal exchange technology platform to one run here in Idaho. This launch did not come without challenges. There were delays in receiving the data from the federal government, changes in requirements to re-enroll customers that signed up last year, and changes in requirements tied to the use of grant funding. However, status as a state-based exchange with operations under direct control, enabled YHI to act quickly to find resolutions while keeping the assessment fee low and maintaining robust choices for consumers.

The year 2014 focused on the design of the technology system and how applications would be processed and customers would be enrolled. In designing the system, YHI partnered with the Department of Health and Welfare (DHW) to process eligibility for tax credits. The next step was to move all 76,000 enrollees from the healthcare.gov platform to YHI and reprocess their tax credit eligibility. As a state-based exchange, YHI recognized that it was very important to reprocess tax credit eligibility for all customers to ensure they were receiving the appropriate amount of tax credit. **Mr. Kelly** reported the federal technology system had no safeguards to ensure the tax credits Idahoans received in 2014 were accurate. The data came later than expected from the federal government and with many errors. However, the DHW took the available data and reprocessed everyone's eligibility to determine accurate tax credits that could be applied to consumer premiums in 2015. Consumers then received a notice of their eligibility for tax credits and other cost-savings for 2015.

The technology platform is working. However, the Exchange has experienced and addressed a few challenges. **Mr. Kelly** explained that first, after DHW redetermined eligibility for the 76,000 insureds that had coverage in 2014, agents and customers had some challenges linking the eligibility determinations to their accounts so they could enroll with the right tax credit applied. This led to demands on the call center being higher than anticipated. Some customers and agents experienced delays in getting their questions answered. As a state-based exchange, with operations under the control of the Exchange, in a few short weeks working with partners at DHW, additional staff was trained and deployed to reduce wait times and to help consumers and agents correctly link the eligibility determination to their accounts. As enrollments continue to be processed for the 2015 open enrollment period, YHI is working through reconciling some challenges with carriers involving duplicate enrollments and terminations. No technology launch is perfect. YHI anticipated there would be bumps in the road, but is confident that the right experts are in place to quickly handle these issues.

Mr. Kelly said another highlight this year is that YHI has maintained and grown a network of over 1,000 agents and brokers who have completed training on YHI and who have the primary role of helping consumers shop for and select a plan on YHI. This represents a 30 percent increase in agents participating in the Exchange from last year. As the Exchange moves toward financial sustainability in 2016 and there are fewer resources available for broad-based outreach, agents and brokers will be vital to help retain current customers and continue to enroll new customers that enter the market. These agents also work closely with the 94 enrollment counselors from hand-picked community organizations across the State, who help educate customers about their options and often refer them to agents and brokers to assist with final plan selection.

In addition to being able to quickly respond to the needs of customers by maintaining local control, costs have been kept significantly lower than the federal exchange and most state-based exchanges by building an exchange that is right-sized for Idaho. **Mr. Kelly** compared the Exchange to a start-up business. He said navigating through the rules and regulations for federal grant funds in 2013, 2014 and through the end of 2015 was a challenge. The Exchange has been treated as a capital investment that will put the Exchange on a path to long-term financial sustainability. These funds have been used to invest in the technology system and in making customers aware of the tools and resources available through the Exchange. By using vendor expertise and resources to build the technology system and infrastructure, YHI has kept staff count low which will enable the Exchange to easily transition into maintenance and operation mode

with low on-going overhead costs. This approach will serve as the foundation for YHI's financial sustainability period which will begin on January 1, 2016.

Most Idahoans are eligible to use YHI if they choose to shop, compare and choose a health insurance plan. To be eligible to use YHI, Idahoans must live in the United States, be a United States citizen or national (or be lawfully present) and cannot currently be incarcerated. Those with Medicare coverage are not eligible to use YHI to buy a health or dental plan. In addition to being a place to shop for health insurance from multiple private insurance companies, YHI is the place where consumers can go to determine if they are eligible to receive a tax credit or cost-sharing reductions to lower their costs. To be eligible for cost-savings programs, consumers must be eligible to shop on the Exchange, have an income and family size that falls within the ranges (\$11,670-\$46,680 for individuals, \$15,730-\$62,920 for a family of two, \$19,790-\$79,160 for a family of three, and for a family of four \$23,850-\$95,400), and not have access to affordable coverage through an employer or other government program such as Medicaid or the Children's Health Insurance Program (CHIP).

Mr. Kelly said a large majority of Exchange shoppers have enrolled with a tax credit, and price and availability of tax credits seem to be the biggest motivators for enrollment through YHI. As a result, a majority of outreach efforts have focused on the population that is tax credit eligible. In 2014, nearly 9 in 10 Idahoans who enrolled in coverage had a tax credit applied to lower their cost of insurance. This year's numbers are still incomplete as there are a few more weeks of open enrollment. Currently, three-quarters of enrollments are for those who are seeking a tax credit.

Mr. Kelly pointed out that price and value were a key motivator to purchase. Both this year and last year over 70 percent found great value and elected to enroll in a silver plan. Customers using silver plans that fall in the right income range can be eligible for both a tax credit and also lower out-of-pocket costs on things such as co-pays, coinsurance and deductibles. Platinum plans, which have the highest monthly premiums, have not been as popular. Bronze plans have some of the lowest monthly premiums, but the customer has to pay more when they go to the doctor or use a medical service.

The 'young invincible population'; those between the ages of 18 and 34, make up approximately 27 percent of enrollments. This age group is very important as having younger and generally healthier adults helps balance the risk pool and helps to keep premium prices stable and lower over time. Young people signing up also support the long-term sustainability. If customers can be retained, they are potential long-term clients who YHI can continue to educate on the value of insurance.

Mr. Kelly said looking to 2015, the primary goals for the Exchange are to continue to make prudent financial decisions to be prepared for financial sustainability starting on January 1, 2016; to maintain and enhance the technology system to provide an even better experience for customers; and to retain approximately 80 percent or more of customers each year in order to support financial sustainability.

He said he did not know if the assessment fee would be increased. He noted that was a decision that would come from the Board and would be discussed openly in the coming months.

Automating technology functions and improving the consumer experience are important as the ease of use and automation of the system will impact operational costs and the ability to be financially sustainable. More automated functions

reduce the operational need for support, thereby reducing on-going operational costs. These enhancements include items such as further automation of eligibility determination, online change reporting or a carrier rate review tool. YHI is looking at using remaining federal grant funds to invest in these enhancements and others, with an eye towards maintaining compliance to keep control of the Exchange, cost and need.

The more functions that can be automated the lower the need for customer service representatives and expending resources on consumer assistance. There will always be a need for consumer assistance, and YHI wants to do everything they can to make agents and brokers self-sufficient to reduce the need for YHI resources and to assist with the application and enrollment process. This involves using part of the grant funding this year to invest in continued training of agents and brokers and development of tools, job aids and resources to assist consumers.

Retention of current customers will be key to the success of the Exchange. In the first two years, outreach efforts have reached most of the 130,000 consumers that are eligible for tax credits. The strategy will be evaluated when the totals at the end of this open enrollment period are received. YHI anticipates that the focus will be keeping the current customers moving forward. It is anticipated in 2016 and beyond approximately 80 percent of enrollments will be from retention of existing customers and 20 percent will be new enrollments from those that are tax credit eligible and new to the market because of moving or other life changing events.

YHI has achieved great things in the last two years and is working for over 80,000 Idahoans. They have maintained control of the Exchange, prevented federal government intervention, and, most importantly, administered a more efficient program. This has saved consumers money while also putting the Exchange on a path to financial sustainability.

Vice Chairman Patrick wanted to know the definition of tax credits. **Mr. Kelly** explained the credit is an advanced tax credit and it is reconciled when the consumer files their taxes.

Senator Martin asked for an explanation of the roles of an in-house assister, navigator, broker and agent. **Mr. Kelly** explained agents and brokers are licensed in the State. They are certified through YHI. In-person assisters and navigators are enrollment counselors who educate the consumer. There are seven enrollment counselors in the State. They are not allowed to recommend a plan. **Senator Martin** and **Mr. Kelly** discussed the possibility of a change in the future of the assessment fee of 1.5 percent.

Senator Schmidt and **Mr. Kelly** talked about cash reserves of \$117.1 million for the second grant. **Mr. Kelly** elaborated and said YHI has received three federal grants. The first two were awarded in 2013 and the third was awarded in December of 2014. YHI has \$17 million remaining from the first two grants. The third grant is not included in those figures. The value of the third grant is \$35 million. Grant funds that are available is \$52 million. The cash reserves are separate and distinct from the grant funds. He explained the 1.5 percent assessment on plans through the Exchange since open enrollment last year has been held in reserve by YHI and will be held in reserve until the sustainability period beginning in January 2016. **Mr. Kelly** said there are approximately \$3 million in cash reserves. **Senator Schmidt** and **Mr. Kelly** discussed the 146 plans available on the Exchange in 2014 and the increase in 2015 to 198 available plans. They also talked about the increase in the number of carriers. **Senator Schmidt** and **Mr. Kelly** discussed the premium rate changes as they related to each individual family situation. They talked about the popular silver plan, and **Mr. Kelly** pointed out there was a general range in the

premium rate ranging from a 12 percent decrease up to a 9 percent increase.

Chairman Tippetts commented there was anticipation more plans would be offered than the federal exchanges. He was pleased to hear there are currently 198 plans offered. He commented about the consumers who were pleased with their plans. He wanted to know if there had been complaints from people who were receiving an increase in medical insurance premiums. **Mr. Kelly** said YHI has heard concerns, but complaints could be because of a change in the household composition, moving, or a number of different factors.

Chairman Tippetts and **Mr. Kelly** discussed whether or not federal subsidies were available to federal and state exchanges due to pending litigation. **Mr. Kelly** indicated the state-based status should not be affected because Idaho has maintained its status as a state-based exchange.

Senator Schmidt said he has heard complaints about the difficulty of finding a high deductible plan. He asked for a description of the limits of a high deductible plan. **Mr. Kelly** answered there were nine essential health benefits that every plan has to contain. The plans are reviewed by the DOI.

Vice Chairman Patrick wanted to know what the federal exchange charged for an assessment fee. **Mr. Kelly** explained the federal assessment fee was 3.5 percent and Idaho charged 1.5 percent.

Senator Cameron remarked he has used the system repeatedly this year and it is far more responsive than the federal system. He found the in-house assisters and navigators to be responsive and very easy to work with. He referred to the question that Senator Schmidt asked and said the highest deductible plan that he recalled being available was the \$6,350 plan. The typical bronze plan is a \$5,000 deductible plan and has some adjustment depending upon the type of plan, the company, and the location. The figures can adjust over time. The maximum out-of-pocket was also \$6,350. Those who choose that deductible end up with a 100 percent benefit after the deductible is met. As soon as the figures are entered into the estimator, the plans are shown, including the high deductible plans. There was a slight increase in most of the plans and some did not experience an increase. He thanked the YHI for all of their hard work.

**PASSED THE
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

**DOCKET NO.
17-0204-1401:**

Industrial Commission Worker's Compensation Law - Benefits. **Matt Vook**, Benefits Analyst, Industrial Commission (Commission) explained the rule allows for the reimbursement of health care travel expenses of an injured worker who attends necessary medical appointments as a result of an industrial injury or occupational disease, pursuant to Idaho Code § 72-432, Section 1. The rule removes the form for the reimbursement of health care travel expenses from the actual rule and directs the injured worker to the Commission address or website to obtain the form. Negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee (CAC), which included representatives of insurance carriers and medical providers, had been providing input to the Commission on the issue.

MOTION:

Senator Tippetts moved to approve **Docket No. 17-0204-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0206-1401: **Industrial Commission Employers' Reports.** **Matt Vook**, Benefits Analyst, Industrial Commission (Commission), explained the rule eliminates the language that extends the deadline for filing a summary of payments for adjusters who do not make timely indemnity payments; it changes the time period from 60 days to 120 days to file a summary of payments in case of default by an employer for reason of insolvency or bankruptcy. Negotiated rulemaking was not conducted because a subcommittee of the CAC, which included representatives of insurance carriers and self-insured employers, has been providing input to the Commission on the issue.

MOTION: **Senator Schmidt** moved to approve **Docket No. 17-0206-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0208-1401: **Industrial Commission - Miscellaneous Provisions.** **Matt Vook**, Benefits Analyst, Industrial Commission (Commission), indicated the rule provides the Commission's mailing address; removes the form notice to claimants of a status change, pursuant to Idaho Code § 72-806, from the actual rule; and directs the constituent to the Commission address or website to obtain the form. Negotiated rulemaking was not conducted because a subcommittee of the CAC, which included representatives of insurance carriers and self-insured employers, has been providing input to the Commission on the issue.

MOTION: **Senator Schmidt** moved to approve **Docket No. 17-0208-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0211-1401: **Industrial Commission - Under Workers' Compensation Law - Security for Compensation - Self-Insured Employers.** **Jane McClaran**, Financial Officer, Industrial Commission (Commission), stated the rule is needed to implement the qualified exception requirements of self-insured employers under Idaho Code § 72-301A. The rule also confers a benefit to existing self-insured employers by allowing the application of an Experience Modification (E-Mod) when calculating premium tax payments. Pursuant to Idaho Code § 67-5226(1)(b) and (c), the Governor has found that temporary adoption of the rule is appropriate. The rule is necessary to comply with the requirements of Idaho Code § 72-301A, for employers at Idaho National Laboratory (INL) working under a cost-reimbursement contract with the federal government. It allows the self-insured employer to apply for an E-Mod rating from the National Council on Compensation Insurance (NCCI) for use in its premium tax filing in compliance with Idaho Code § 72-523.

Negotiated rulemaking was not conducted because the rule complies with the requirements of Idaho Code § 72-301A, requiring the Commission to adopt rules governing the administration of employer self-insurance.

Ms. McClaran reported the new code is specific to INL contractors working under a cost reimbursement contract with the federal government. She added that under Section .014, Subsection .02, the Commission addressed in rule the practice of requiring a surety company issuing a surety bond to be independent from the principal self-insured employer for which the bond is issued.

Finally, the proposed addition of Section .015 allows self-insured employers to elect to apply the NCCI for an E-Mod factor. The factor may then be applied to the Idaho premium tax computation, effective with calendar year 2014.

Vice-Chairman Patrick wanted to know how many self-insurers there are in the State. **Ms. McClaran** said there are 28.

Senator Cameron and **Ms. McClaran** had a conversation regarding the change in the rule. They discussed whether the INL was satisfied with the rule. **Ms. McClaran** emphasized this rule would allow future contractors to be eligible immediately, rather than operating on the site for a period of years. They discussed the lack of negotiated rulemaking and if there was any opposition to the rule. **Ms. McClaran** said this rule was implementing what was passed last session unanimously by the Legislature. She said there was no opposition to the rule. **Ms. McClaran** said premium tax was assessed. The Commission worked very closely with the State Insurance Fund and refunded a part of the premium tax.

Chairman Tippetts asked Ms. McClaran to explain to him why this was a pending rule and yet, there was temporary rule justification from the Governor's office. **Ms. McClaran** explained that because the statute was passed last Session, changes were being implemented to comport to the new law. She said the E-Mod was added and was conferring the benefit. This was one of the criteria required by the Governor's office in order to qualify as a temporary rule. She explained the three criteria to be eligible for a temporary rule: 1) necessary to protect the public health, safety or welfare; or 2) compliance with the deadlines in amending of governing law or for federal programs, which is the case with the exceptions to qualifications; or 3) conferring a benefit, which is specific to the ability to use E-Mod. They discussed the effective date and how the docket was treated as a pending rule, which will not be in effect until the end of the Session if approved by the Legislature. Parts of the rule that were temporary were also discussed. **Tom Limbaugh**, Commissioner for the Commission, indicated part of the rule was temporary, and the issue came up in the House and Dennis Stevenson, Coordinator, Administrative Rules, answered the question.

Chairman Tippetts and **Ms. McClaran** talked about a specific exemption for an employer at the INL site who has a reimbursement contract with the federal government. They talked about the requirement for a \$4 million payroll. **Ms. McClaran** commented the likelihood of an employer having a cost-reimbursement contract with the federal government that is so small that they have less than a \$4 million payroll was very unlikely. The reason the threshold remained the same was because there was a desire to have a sophisticated employer to consider self-insuring.

Chairman Tippetts wanted to know why the E-Mod factor was implemented. **Ms. McClaran** said Idaho Code § 72-523 requires that self-insured employers pay premium tax based on the premium the employer would be required to pay the State Fund if the employer obtained a work comp insurance policy through the State Fund. The State Fund allows an E-Mod in determining premium tax. Depending on the employer's experience, the tax could be more or less and that is why this rule was written.

MOTION:

Senator Martin moved to approve **Docket No. 17-0211-1401**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0209-1401:**

Industrial Commission - Medical Fees. **Patti Vaughn**, Medical Fee Analyst, Industrial Commission (Commission), said this rule implements an update to the facility fee schedule to reflect market conditions. A change to the Current Procedure Terminology (CPT) code range affecting psychiatric diagnostic evaluations is made to align with coding changes implemented by the American Medical Association (AMA). The allowable period for prompt payment by a payer is changed to commence upon acceptance of liability if made after receipt of the provider's bill. Negotiated rulemaking was not conducted because a subcommittee of the CAC, which included representatives of insurance carriers and medical providers, has been providing input to the Commission on the issue. A change in reimbursement for certain hospital outpatient diagnostic lab services is made to align with a change made by Centers for Medicare and Medicaid Services (CMS).

Ms. Vaughn reported there are two main components to the Resource Based Relative Value Scale (RBRVS). CMS assigns each coded medical procedure a numerical Relative Value Unit (RVU) based on the expenses associated with providing that service and a monetary conversion factor determined by the Commission. The allowed amount is the assigned RVU multiplied by the corresponding conversion factor.

The range adjustments appearing in Medicine Groups 1 and 2 are housekeeping in nature, regrouping some psychiatric diagnostic evaluation codes to keep similar services reimbursed at a similar rate. This is done to align with coding changes implemented by the AMA.

Ms. Vaughn reported that for the second year in a row, no adjustment has been proposed to the physician conversion factors. The Commission is sensitive to the need to preserve access to primary care for injured workers. Over the last few years the Commission has focused their efforts on reducing both the number of conversion factors and the disparity between the surgery and medicine categories. However, the Commission did not find an increase to be warranted based on an analysis of available charge data. The data revealed that 85 percent of the units billed for the most frequently billed office visit code (CPT code 99213) were billed below what the fee schedule currently allowed. Rule 17-0209-0301(a) limits reimbursement to the lower of the calculated fee schedule amount or as billed by the provider, or the charge agreed to pursuant to written contract. Industry reports consistently show the Idaho fee schedule to be among the nation's highest. The CAC recommended no change to the physician rates for fiscal year (FY) 2016. The decision to freeze physician reimbursement rates for another year prompted dozens of physicians to request a public hearing, which was granted on November 13, 2014. Most of the testimony received stated that family practice physicians were providing primary care at a lower cost than what would be allowed for the same care in a facility setting. Physicians also testified that their costs were rising. The bottom line is the Commission cannot justify an increase when the data shows most physicians are billing below what is allowed. Preserving access to physicians remains the Commission's priority. The Commission intends to seek new data this year and reassess the need to adjust the physician fee schedule based on that data.

Chairman Tippetts discussed the negotiated rulemaking process with **Ms. Vaughn**. **Ms. Vaughn** said the reason for not conducting negotiated rulemaking was because there was a general consensus of the subcommittee and there was a broad representation of stakeholders. **Chairman Tippetts** stated that the Commission should conduct negotiated rulemaking whenever feasible, even though that has not been the practice. **Vice Chairman Patrick** said he agreed.

Ms. Vaughn continued with her presentation. She said hospital payments were calculated as the relative weight that is assigned by CMS multiplied by the base rate set by the Commission. She pointed out that a 2 percent rate increase has been proposed for hospital inpatient and outpatient services and for ambulatory surgery centers. The facility fee schedule was first implemented in January 2012. This is the first adjustment since implementation. The base rate for hospital inpatient services is increasing from \$10,000 to \$10,200; the hospital outpatient base rate is increasing from \$138 to \$140.75; and the base rate for ambulatory surgery centers is increasing from \$90 to \$91.50. These increases were adopted with the recommendation of the CAC.

Additional housekeeping changes have been added to allow reimbursement for hospital outpatient diagnostic lab services when performed separate from any other outpatient services. This change was necessary due to a change made by CMS that bundles payment of these services into other payments.

Insurance company payers are required to issue payment within 30 calendar days of receiving a medical bill, but sometimes a payer receives the bill before receiving notice of the claim from the employer. This change allows a payer 30 calendar days from acceptance of liability if made after the bill is received from the provider. With this change, the clock will not begin ticking for the payer until they know there is actually an industrial claim.

Senator Cameron asked for an interpretation of outpatient lab tests relating to reimbursement for hospital outpatient services. **Ms. Vaughn** explained that Medicare made changes that bundled payments and paid the bill inclusive with other items on the invoice. Hospitals would bill for diagnostic labs, but because of the status code, they were not eligible for payment. With the new modifier, the provider can bill diagnostic labs and will be eligible for payment.

Senator Cameron asked about the potential unintentional consequences of the wording. He cited an example of tests being run on a worker who had to go to the hospital and an outside service reads the Magnetic Resonance Image (MRI). In the process the patient had to be life-flighted to another hospital, and the doctor ordered another MRI. He wanted to know if the carrier would be allowed to pay for the MRI twice. **Ms. Vaughn** said that since they were two different hospitals both MRIs should be paid.

MOTION: **Chairman Tippets** moved to approve **Docket No. 17-0209-1401**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0209-1501: **Industrial Commission - Medical Fees - Temporary Rule.** **Patti Vaughn**, Medical Fee Analyst, Industrial Commission (Commission) reported the Idaho workers' compensation hospital outpatient fee schedule is modeled after the Ambulatory Payment Classification (APC) payment system created by Centers for Medicare and Medicaid Services (CMS). After the Commission adopted proposed rules for FY 2016, CMS published a final rule implementing coding changes for some hospital outpatient surgical encounters that would significantly increase payments if implemented with the existing language in the rule. In order to keep payments stable and to avoid unnecessary confusion, the Commission adopted this temporary rule extending the use of the 2014 relative weights. The Commission intends to address the conflict in a more permanent fashion during the next rulemaking cycle.

MOTION: **Senator Cameron** moved to approve **Docket No. 17-0209-1501**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0501-1401: **Industrial Commission - Rules Under the Crime Victims Compensation Act** was continued to another meeting, due to the lack of time.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:56 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 29, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23306</u>	Unclaimed Life Insurance Benefits	Senator Cameron Representative Collins
DOCKET NO. <u>18-0146-1401</u>	Recognition of New Annuity Mortality Tables	Tom Donovan, Acting Director, Department of Insurance
<u>18-0153-1401</u>	Continuing Education	Tom Donovan, Acting Director, Department of Insurance
<u>18-0144-1401</u>	Schedule of Fees, Licenses and Miscellaneous	Tom Donovan, Acting Director, Department of Insurance
<u>24-0201-1401</u>	Rules of the Board of Barber Examiners	Roger Hales, Administrative Attorney, Bureau of Occupational Licenses
<u>24-0401-1401</u>	Rules of the Idaho Board of Cosmetology	Roger Hales, Administrative Attorney, Bureau of Occupational Licenses
<u>24-2501-1401</u>	Rules of the Idaho Driving Business Licensure Board	Roger Hales, Administrative Attorney, Bureau of Occupational Licenses
<u>49-0101-1401</u>	Rules of Procedure of the Idaho Certified Shorthand Reporter's Board	Roger Hales, Administrative Attorney, Bureau of Occupational Licenses
<u>38-0301-1401</u>	Rules Governing Group Insurance	Keith Reynolds, Chief Fiscal Officer, Department of Administration

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 29, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

RS 23306: **Relating to Unclaimed Life Insurance Benefits.** **Senator Cameron** disclosed for the record that he is licensed to sell health and life insurance in the State. He gave a brief background on unclaimed life insurance benefits and what happens when no one claims the insurance in the case of a death. He said the solution to this issue has developed over time and it is a consumer-friendly bill to make sure the consumer or the family receives the funds.

John Mackey, representing United Heritage Life Insurance Company, said this was model legislation adopted by the National Conference of Insurance Legislators (NCOIL). The legislation will require life insurance companies doing business in Idaho to compare certain in force life insurance policies, annuity contracts and retained asset accounts at least semi-annually with the Social Security Administration Master Death File or an equivalent database. The life insurance companies must determine if a person has died, and if the decedent was an insured policy or owner of an annuity or asset account as defined in the legislation.

When a match occurs, the legislation requires timely action by the life insurance company to pay benefits to the rightful beneficiary or ultimately escheat the benefits to the State of Idaho as unclaimed property if a beneficiary cannot be found.

Both the Department of Insurance and State Treasurer's offices are supportive of this legislation.

MOTION: **Senator Martin** moved to send **RS 23306** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

**DOCKET NO.
18-0146 -1401:**

Department of Insurance - Recognition of New Annuity Mortality Tables. Tom Donovan, Acting Director, Department of Insurance (Department). **Mr. Donovan** gave background information on the rulemaking. He explained rulemaking amends Rule 46 to adopt the National Association of Insurance Commissioners (NAIC) 2012 Individual Annuity Reserve Table (IAR) 2012), consistent with NAIC Model Regulation 821, for annuities issued January 1, 2015, and later. The model was developed by actuaries representing regulators and industry representatives. This new reserving method will allow companies to adjust reserves in recognition that reserves should not merely be based on age, but that mortality expectations change over time. Generally, the rule would result in higher reserves being held by companies. There has been a national push to make the changes set forth in this model. The status of that effort is that 27 states have adopted this model, 5 other states in addition to Idaho have the rule pending, and it is believed that another 3 states will adopt the rule this year.

Mr. Donovan said the Department conducted negotiated rulemaking. A notice of intent to promulgate rules was published in the Administrative Bulletin on July 2, 2014, and also on the Department website notifying potential interested parties of a public meeting to be held on July 24, 2014. The public meeting was held, however, no one appeared. The Department received a letter in support of the rulemaking dated July 24, 2014, from the American Council of Life Insurers (ACLI) indicating that it represented more than 300 member companies and that 250 of those companies write business for Idahoans.

Mr. Donovan pointed out the proposed rule was published September 3, 2014. In response to the proposed rulemaking, the Department did not receive any request for hearing but did receive a comment letter from the ACLI of a technical nature. The concern arose from references to certain subsections. Following that letter, the Department actuary, Wes Trexler, had a telephone conversation with the senior actuary for the ACLI. The Department spoke to an actuary at the NAIC. Following those discussions, the language was revised by inserting specific dates rather than referring to effective dates of various subsections. This resulted in removing potential ambiguity from the prior language.

This rulemaking matches the national model and will help create a level playing field. Aside from the support of the ACLI, the Department has not heard from anyone else concerning this rulemaking and knows of no opposition.

Vice Chairman Patrick asked why more reserves were required since people were living longer. **Mr. Donovan** said that as life expectancy grows, life insurance companies must have higher reserves.

Chairman Tippets and **Mr. Donovan** discussed the magnitude of the increase in reserves and the initial adjustment in funds.

Senator Lakey said he noticed the tables were from 2012 and wanted to know how often they were updated. **Mr. Donovan** reported they were not updated very often.

MOTION:

Senator Schmidt moved to approve **Docket No. 18-0146-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0153-1401:**

Department of Insurance - Continuing Education. Tom Donovan Acting Director, Department of Insurance (Department) reported the first couple of pages have some general rulemaking cleanup provisions, such as changing the title of the rule and including some of the standard sections to conform with rulemaking protocol. A new definition for "licensee" was added. A definition of the term "licensee" adds specificity and clarity to include an individual licensed as a producer (previously referred to as an agent or broker), and "adjuster" or one who adjusts insurance claims. For example, an adjuster investigates and negotiates settlement of insurance claims and a "public adjuster" is one who, for compensation, acts on behalf of an insured in first party claims on real or personal property. This continuing education (CE) requirement already applied to public adjusters in addition to producers. The biggest change in this rulemaking is to apply CE requirements to adjusters (sometimes referred to as independent adjusters). The Department was already authorized by statute to require CE, but just had not put that in place. Adjusters have been added to the CE rule as part of a move towards greater reciprocity and perhaps uniformity among states. Once CE credits are accepted and tracked for adjusters, they will be able to satisfy the requirement. This protocol was already established for producers and public adjusters. Non-resident licensees that satisfy comparable requirements in their home states are not required to satisfy additional requirements in Idaho. Approximately 34 states license adjusters and 20 of those require CE for adjusters.

The Department conducted negotiated rulemaking, and a public meeting was held on July 22, 2014. The Department prepared a draft of the rulemaking and had that available at the meeting and circulated it to interested parties just prior to the meeting, as well as posting it on its website. No interested parties or members of the public attended the July 22 public meeting. The Department received no comments from the public or industry.

Senator Patrick wanted to know why the word "producer" was used instead of "salesman." **Mr. Donovan** said the term was based on the National Insurance Commission (NIC) model and was standard in the industry.

Senator Cameron disclosed for the record that he is an insurance agent. He asked Mr. Donovan to give him an example of what type of written statement his Department may require regarding this rule. **Senator Cameron** expressed a concern that an agency could circumvent the rules process. **Mr. Donovan** stated this was fairly standard language inserted at the suggestion of the Office of Administrative Rules. His Department generally updates provisions because the first nine or ten sections of the rules are generally the same. He said there were no written interpretations with respect to this rule. He said the Department of Insurance (DOI) follows a protocol that is very common among insurance regulators in other states. He commented his Department sometimes issues bulletins which explain and add additional clarity. Bulletins do not have the force and effect of law. He said it was conceivable that something as informal as a letter would fall into the category of interpretation.

Senator Martin wanted to know why the office hours and mailing and street addresses were being put into the rule. **Mr. Donovan** said the Office of Administrative Rules requested that agencies include this information as routine practice in case the public has an issue or concern. **Senator Martin** commented he typically sees Mountain Standard Time after the hours of operation and wanted to know why that was not included. **Mr. Donovan** said the DOI has a regional office in Coeur d'Alene in Pacific Time. The Department decided not to include the time zone since part of the State is in Pacific Time and part is in Mountain Time.

MOTION: **Chairman Tippetts** moved to approve **Docket No. 18-0153-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0144-1401: **Department of Insurance - Schedule of Fees, Licenses and Miscellaneous Charges.** **Tom Donovan**, Acting Director for the Department of Insurance (Department), said there was one change from the proposed rule made at the pending rule stage. The fee amount paid to a third party vendor but not received by the Department has been added. In addition to minor technical changes eliminating surplus language, the pending rule does three things: (1) Expressly provides that the \$500 registration fee is applicable to self-funded student plans, not just self-funded employee plans. (2) Provides that adjusters pay the same licensure fee as public adjusters of \$80. Additional language adds public adjuster to the fee provisions concerning taking an examination for licensure and for license renewal. These first two changes are the result of legislative changes in relatively recent years, and the Department is conforming the language in the fee rule to those changes. (3) Changes the allowable examination fee for those taking an exam to become licensed. This has not changed in 13 years and follows a renegotiation of the contract for examination services and allows for greater flexibility with a "not to exceed amount."

Mr. Donovan explained the next change simply addresses a technical language fix, where a clause is struck in paragraph 020.04.k referencing subsection or paragraph 020.05.g. This is appropriate because the referenced paragraph does not exist. The second substantive change adds public adjusters into the fee rule in the appropriate references for application fee, examination fee, and renewal fee.

Mr. Donovan indicated the double underscored language in subsection 030.02 was added at the pending rule stage to clarify that the examination fees were collected by a third-party and not by the Department. Taking an examination and passing is a prerequisite to licensure, but not something the Department directly administers.

The examination fee referenced currently as \$60 is to be changed to provide that it shall not exceed \$80. The most recent contract for exam administration services complied with this provision. However, the vendor sought to charge a \$70 fee for examinations. This change will allow a future change in the examination fee. A couple of years ago, the Department had a similar situation with the administration of fingerprint fees where the fee was raised from \$60 to an amount not to exceed \$80. The Department would like the flexibility to adjust this in the future.

He said negotiated rulemaking with the Notice of Intent to Promulgate Rules was published on July 2, 2014; a public meeting was held on July 24, 2014. Additionally, the Department prepared a draft of the rulemaking for discussion at the public meeting and had that available at the meeting and circulated it to interested parties just prior to the meeting and posted it on its website. At the July 24 public meeting, no interested parties or members of the public attended. The Department received an inquiry from the Idaho Associated General Contractors (AGC) who was not able to attend the public meeting. After they saw a draft of the rulemaking on the website, the Department received an indication that the AGC had no concerns. The notice of proposed rulemaking and the text of rule changes were published in the administrative bulletin on September 3, 2014; the notice of adoption of the pending rule was published on November 5, 2014.

Chairman Tippetts congratulated the Department for conducting negotiated rulemaking.

Senator Lakey disclosed for the record that his law firm represented a government self-funded program.

MOTION: **Senator Schmidt** moved to approve **Docket No. 18-0144-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0201-1401: **Rules of the Board of Barber Examiners.** **Roger Hales**, Attorney, presented this rule on behalf of the Board of Barbers (Board). He said the Board regulates the practice of barbers and is served by the Bureau of Occupational Licenses (Bureau). He said the rules are being updated to simplify and clarify the licensing of contiguous barber shops, which allows a licensee to practice as an independent contractor. Currently, a license is issued to a space or station within a primary barber shop and a new application is required if the licensee changes the space they are working in. The updates will allow the issuance of a contiguous barber shop license to the address of the primary shop, which will allow licensees to move their workspace within the primary shop without reapplying for a new license. The sanitation rules are also being updated to standardize the inspection process.

Negotiated rulemaking was not conducted because the rules of the Board are being updated to simplify and clarify the licensing of contiguous shops, which allows a licensee to practice as an independent contractor. The Board has worked with interested parties including licensees, representatives from the Department of Labor and the Industrial Commission in order to protect a contiguous licensee's independent contractor status.

Mr. Hales said that a barber shop and a cosmetology shop could be together, separated by a partition not more than seven feet high. The change in the rule gives more flexibility and updates and clarifies sanitation rules.

The change in definition updates the definition of service dogs trained to do work or perform tasks for persons with disabilities in order to be in compliance with the federal Americans With Disabilities Act (ADA).

Senator Schmidt wanted to know how many licensed barbers there are in the State. **Mr. Hales** indicated there are approximately 900. **Senator Schmidt** and **Mr. Hales** had a conversation about possible problems with unlicensed barbers and sanitary conditions and fixed locations. **Mr. Hales** explained the owner of the shop would determine what stations were reserved for employees and what stations would be reserved for contiguous areas.

Senator Lee questioned whether the Board wanted to reference service animals, such as miniature horses or service dogs, or if the ADA says specifically service dogs. **Mr. Hales** said it was his understanding that a service animal included a miniature horse, and that federal law prevails. He said he thought this rule meant to emphasize that service dogs are allowed and no other animals. The intent was to clarify service dogs and refer to the definition of service animals under the ADA. **Senator Lee** urged Mr. Hales to make sure the State was not out of compliance.

Senator Lakey mentioned he read the rules as no animals are allowed in a shop except service dogs, which should be consistent with the ADA definition of service animal. **Mr. Hales** replied he could clarify the concern with the Board.

Chairman Tippetts brought up the situation of a business adjacent to living quarters and wanted to know if the intent was that the doors should be closed during the hours of business or should they also be closed outside the hours of business. **Mr. Hales** said the door must be closed during business operation. There may be a good reason to have the door closed otherwise from the living area. He said home shops have to provide a separate outdoor entrance and all doors from the adjacent shop shall be closed. The intent was the door between the living quarters and the business should be closed. **Chairman Tippetts** stated there should be a little more

thought given to when the door should be closed.

Chairman Tippetts brought up negotiated rulemaking and wanted to know if the Bureau or the various boards have resources to conduct negotiated rulemaking. He said he did not believe this was done for any of the occupational licenses rules and he said the reasons given did not seem to justify not performing negotiated rulemaking.

Tana Cory, Chief, Bureau of Occupational Licenses (Bureau), said all of the meetings are open to the public. They are noticed to the public, posted on their website, and interested parties are notified. Formal negotiated rulemaking has not been done, but the Board does conduct informal negotiated rulemaking. Once the rules have been published, postcards are sent to licensees about changes. They have had a very good response. If they receive a certain number of comments, there is a requirement to do formal negotiated rulemaking. **Chairman Tippetts** commented he was sometimes concerned when agencies did not conduct negotiated rulemaking even if they notified the interested parties and invited them to participate. There are others who may have an opinion, but were not invited to the meeting. Negotiated rulemaking is a more open process. He asked Ms. Cory if she was confident when the Bureau is conducting these meetings other parties who may not have had an invitation sent to them are not excluded. **Ms. Cory** said that was a concern so the Bureau mails a postcard to every licensee who would be impacted by any rule change. However, if there are not enough comments to trigger the formal negotiated rulemaking, negotiated rulemaking is not conducted.

MOTION:

Senator Schmidt moved to approve **Docket No. 24-0201-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0401-1401:**

Rules of the Idaho Board of Cosmetology. **Roger Hales**, Attorney, presented this rule on behalf of the Board of Cosmetology (Board). He said the rules were being updated to simplify and clarify the licensing of contiguous establishments which allows a licensee to practice as an independent contractor. Currently the licenses are issued to the space or station within a primary establishment and requires a new application if the licensee changes the space they are working in. The updates will allow the issuance of a contiguous license to the address of the primary establishment, which will allow licensees to move their workspace within the primary establishment without reapplying for a new establishment license. **Mr. Hales** said this idea was addressed in the previous rule, but the language differed. He said the contiguous person was responsible for sanitation.

He said negotiated rulemaking was not conducted because the rules of the Board are being updated to simplify and clarify the licensing of contiguous shops, which allows a licensee to practice as an independent contractor. The Board has worked with interested parties including licensees, representatives from the Department of Labor and the Industrial Commission in order to protect a contiguous licensee's independent contractor status.

Senator Schmidt referred to part of the rule that said restroom facilities should contain an approved hot and cold running water source and approved drainage system. He wanted to know if an establishment would be denied a license if there was only a cold water tap. **Mr. Hales** said that typically, bathroom water cannot be used to run an operation and does not count as hot and cold running water.

TESTIMONY:

Merrilyn Cleland, cosmetologist and a member of the Board, testified that she has three contiguous licenses for hair, nails and esthetician. She spoke in support of this rule. **Senator Lakey** and **Ms. Cleland** discussed the change in this rule, the idea of separate licenses, a group setting and sanitation.

Korrine Sword, representing herself as a cosmetology shop owner in Nampa, indicated she had sent a letter to all of the Senators in support of this rule. She pointed out the amount of paperwork it took to apply for a contiguous license. **Chairman Tippetts** commented there was a lot of regulation, and it was nice when the amount of paperwork was reduced. He asked if there were other areas where work could be reduced. **Senator Schmidt** wanted to know if unlicensed practitioners posed a particular health problem. **Ms. Sword** replied there should be some regulation over the business because of health and safety involved with working with the public.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 24-0401-1401**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-2501-1401: **Rules of the Idaho Driving Business Licensure Board**. **Roger Hales**, Attorney, presented this rule on behalf of the Driving Business Licensure Board (Board). He said H 359, passed by the 2014 Legislature, allows the Board to waive the apprenticeship requirement for licensure for those applicants who hold a current equivalent license in another state or who have the requisite training and experience. The rule allows a waiver of the apprentice training program if an individual holds a current active unrestricted license from another state; or an individual has held an active unrestricted public driver education instructor license from the Idaho Department of Education for two years. This bill was passed with an emergency clause and is in full force and effect. The proposed rule implements the new law.

Negotiated rulemaking was not conducted because the rules of the Board need to be updated to conform with H 359.

Senator Schmidt asked what the financial impact would be with this change. **Mr. Hales** responded that possibly this could increase the number of applicants for private driving instructors.

MOTION: **Chairman Tippetts** moved to approve **Docket No. 24-2501-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 49-0101-1401: **Rules of Procedure of the Idaho Certified Shorthand Reporter's Board**. **Roger Hales**, Attorney, presented this rule on behalf of the Certified Shorthand Reporter's Board (Board). He said the rules are being amended to clarify the nature and scope of the examination, segments of the examination, and temporary permits. These amendments are necessary to establish clear standards for the examination, its content and to further clarify qualifications for a temporary permit.

Negotiated rulemaking was not conducted because the amendments are needed to clarify the scope of the examination, segments of the examination, and temporary permits. This change will benefit the applicants in preparing for the examination. These changes were discussed during noticed, open meetings of the Board. There was no opposition.

MOTION: **Senator Cameron** moved to approve **Docket No. 49-0101-1401**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
38-0301-1401:**

Rules Governing Group Insurance. **Keith Reynolds**, Chief Fiscal Officer, Department of Administration (Department), said revisions incorporate changes in federal law in governing health plan eligibility and the expiration of the Medicare prescription drug reimbursement program. He explained there is a change in dependent eligibility as required by the Affordable Care Act (ACA). There is a requirement this year to cover all dependents under the age of 26 regardless of their access to other insurance options.

The remainder of the rule changes arise from the expiration of the Medicare Prescription Medication Reimbursement Program (MPMR). The MPMR was put into place by the 2009 Legislature, effective January 1, 2010, expiring December 2013. Under the reimbursement program, retirees over 65 and their spouses were able to apply for up to \$2,000 annually to cover prescription costs that fall into the Medicare Prescription "donut hole." Although up to \$800,000 was anticipated as the total cost, the actual amount paid was \$242,000 to 126 participants.

Negotiated rulemaking was not conducted because the proposed rule change will provide conformity with federal law.

Senator Schmidt wanted to know if anyone wanted to appeal, would they have any recourse since the administrative appeals procedure section was removed? **Mr. Reynolds** said appeals are referred to Blue Cross as the administrator of the plan. **Senator Schmidt** wanted to know if that information was referenced in the rule. **Mr. Reynolds** said it was not.

Senator Cameron commented he was here when this provision was negotiated. He talked about the fact that negotiated rulemaking was not conducted because it conflicted with federal law, which was the case for the first part of the rule, but it is not the case in the removal of the reimbursement program. He stated we are doing a disservice to former employees of the State, who should have been notified and at least given an opportunity to express their opinions. **Mr. Reynolds** said he believed the expiration of the reimbursement program was in statute and that was the reason negotiated rulemaking was not conducted.

MOTION:

Chairman Tippetts moved to approve **Docket No. 38-0301-1401**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 3:04 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 03, 2015

SUBJECT	DESCRIPTION	PRESENTER
DOCKET NO.		
<u>10-0101-1401</u>	Board of Professional Engineers and Professional Land Surveyors- Rules of Procedure - Education Requirements	Keith Simila, Executive Director
<u>10-0102-1401</u>	Board of Professional Engineers and Professional Land Surveyors - Rules of Professional Responsibility	Keith Simila, Executive Director
<u>10-0103-1401</u>	Board of Professional Engineers and Professional Land Surveyors - Rules for Corner Perpetuation and Filing	Keith Simila, Executive Director
<u>RS23250</u>	Relating to Engineers and Land Surveyors	Keith Simila, Executive Director
<u>RS23215</u>	Relating to Engineers and Land Surveyors	Keith Simila, Executive Director
PRESENTATION: Idaho Trade Managers		Jeff Sayer, Director, Department of Commerce

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Martin

Sen Lakey

Sen Heider

Sen Lee

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 03, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Chairman Tippets

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m.

DOCKET NO. 10-0101-1401: **Board of Professional Engineers and Professional Land Surveyors - Rules of Procedure - Education Requirements.** **Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said the proposed rule will improve the process the Board uses to substantiate the educational requirements that must be met prior to assignment to examinations or granting a professional engineer license by comity (legal reciprocity). It is difficult for the Board to ascertain the applicant's educational coursework when reviewing foreign education or non-Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET) accredited applications. Also, applications for comity licensure in which the education was completed many years ago are difficult to evaluate where course descriptions are no longer published or available. The Board is expanding the option of requiring an independent evaluation of an applicant's educational credentials to any graduate of a university program that is not accredited by the EAC/ABET organization. The previous rule applied the credential evaluation only to foreign educated applicants.

Additionally, the Board is changing the process to evaluate foreign applicants for comity licensure. The rule revision will separate the foreign applicant process from the interstate applicant process. The foreign applicant process will also separate the foreign credentialing process from those that are Board-approved and those that are not or are unknown. For the non-approved or unknown foreign countries, the Board will add a two-year United States experience requirement, along with education and examination requirements similar to those required of United States engineers. Finally, a provision is added for the Board to waive the prescriptive licensure requirements in this rule and issue a license to an international expert in unique fields of engineering without first approving the licensing process of that country so long as they meet the minimum requirements of Idaho Code § 54-1219. This provision is added to enable unique international expertise to be available on a case-by-case basis when needed.

Senator Heider asked why the District of Columbia was mentioned in this rule since it is not a state. **Executive Director Simila** said there were discrepancies in the way jurisdictions were defined, so the District of Columbia was included for consistency.

Senator Cameron asked Executive Director Simila to explain the waiver process contained in this rule. **Executive Director Simila** said there are international

tunneling experts in Europe and none in the United States. The Board wanted to make sure they had the ability to get the expertise when needed on a case-by-case basis. However, the international expert would have to prove they are an expert, so licensing could be waived.

Senator Cameron commended the Board for conducting negotiated rulemaking. He wanted to know if there were any negative comments on the rules. **Executive Director Simila** said no.

MOTION: **Senator Martin** moved to approve **Docket No. 10-0101-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 10-0102-1401: **Professional Engineers and Land Surveyors. Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said the proposed rule will correct an incorrect citation to Idaho Code § 67-2320, which is the law requiring that public agencies use qualification-based selection processes when soliciting engineering or land surveying services. The Board intends that all provisions of the law be complied with. The existing citation is ambiguous and the rule change clarifies the intent of the Board.

Negotiated rulemaking was conducted.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 10-0102-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 10-0103-1401: **Professional Engineers and Land Surveyors. Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said the proposed rule will require surveyors to perpetuate historic corner record information on the Corner Perpetuation and Filing (CPF) forms that are filed or recorded in the county courthouse in lieu of listing all corner record instrument numbers on the record of survey map. The reason for this change is that over time, the number of CPF record filings are increasing, and there is insufficient room on the record of survey map to continue the practice of listing all corner record instrument numbers without creating a cluttered map that is less legible to read. Only the most current corner record instrument number is proposed for listing on the Record of Survey map. A change to Idaho Code § 55-1906 is proposed that removes the requirement for listing all corner record instrument numbers on the Record of Survey map.

Negotiated rulemaking was conducted.

Executive Director Simila said the readability of the map would be improved because the surveyors complained about the clutter. The entire history of the corners has to be shown on the form. **Senator Cameron** and **Executive Director Simila** had a conversation about researching the history of a corner definition and the differences in changing this rule. **Executive Director Simila** reported the change is in how the information is displayed; instead of being on a map, the history is now shown on a form. Both the form and the map are still filed at the courthouse. **Senator Cameron** wanted a clarification of the history of subsequent documentation. **Executive Director Simila** referred to page 88 of the Pending Rule book, which outlined the changes. Instead of placing all of the history on the map, all of the information will go on the form, with the exception of only the most current corner record.

Senator Cameron wanted to know if the surveyors were supportive of the rule change. **Executive Director Simila** indicated that in the past some surveyors did not want to comply with the law. The Board formed a subcommittee made up of surveyors, Board members, and professional engineers and discussed this change for over a year. The surveyors on the subcommittee came up with the wording for this rule. **Senator Cameron** asked what happens if a surveyor does

not follow the procedure in the future. **Executive Director Simila** said if there is a rule violation, the Board takes the violation under advisement and disciplinary procedures are begun.

MOTION: **Senator Martin** moved to approve **Docket No. 10-0103-1401**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 23250: **Relating to Engineers and Land Surveyors.** **Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), stated this RS has the support of the Idaho Society of Professional Engineers and Professional Land Surveyors. The objective of the proposed legislation is to make minor changes to the requirements for plats, Records of Survey (ROS), monuments and the fundamentals examinations for college students.

Executive Director Simila said there are basic features that land surveyors place on plats and ROS prior to submitting them for filing or recording in county courthouses. The amendment corrects inconsistencies in platting and mapping requirements. Plats and ROS maps are required to have the same minimum features such as north arrow, graphic scale, and bearing and distances for better consistency. Plat and ROS map media requirements are updated and made consistent in all three sections of code to remove outdated media specifications. Requirements are changed to list only the most current corner record on the ROS map to make it more concise. A technical correction insures monuments set by Idaho licensed land surveyors are protected from defacement. The basic requirements assist users in orienting themselves and making sure the scaling of these products is correct when copies are enlarged or reduced.

He reported the media that plats and ROS are printed on as described in current law is no longer available. There was a law change last year that did not involve the Board that attempted to address this issue, but it did not change the law in three sections of Idaho Code where media is described. This resulted in inconsistency in the code. In working with surveyors, suppliers, and county clerks and recorders, the revised law replaces the obsolete language with a new media requirement that fits with current technology and the needs of the counties and surveyors. He said plats are put on mylar as required by Idaho Code.

Kent Absec, Board of Accountancy, explained the first of two licensing examinations is called the Fundamentals of Engineering (FE) or Surveying exam and it is usually taken by students in their senior year or shortly after graduation. All states use the same exam. The exam was successfully converted to a computer-based test in 2014. The Board wants to make this exam available to undergraduate and graduate students prior to graduation. Since the exam can now be taken throughout the year at local testing centers, the Board also wants students to first pass the examination and then apply for their intern certificate. Most states are moving toward making the examination more accessible in this way. This will reduce the barriers for entry into the profession by making it easier to complete the exam prior to or shortly after college graduation.

There is a technical correction related to protection of survey monuments from defacement. Protections were inadvertently removed by a law change made in 2011. The law now provides protections only for monuments set by state or federal land surveyors. The change inserts the words "or set" to make it clear that all monuments set by professional land surveyors licensed in Idaho are protected regardless of their employer. Citizens and businesses pay to have surveyors set monuments at property corners as part of normal boundary surveys.

Senator Martin wanted to know why specify what the method of copying should be since technology is constantly changing. **Executive Director Simila** said this language was produced by surveyors and reviewed by county clerks and courts. He commented that if something is not specific, there will be someone who will not follow the rules.

Senator Lakey asked about the use of ink or toner. He said the surface will be coated with a suitable substance, if required, to assure permanent legibility, and wanted to know what agency was requiring the use of coating. **Executive Director Simila** reported that not all counties or agencies have this requirement, but ink is a surface material that is placed on top of mylar, which can be scratched off, so spray coating is used. Some counties use a scanner and make digital copies, but a number of counties do not have that kind of sophisticated equipment. **Senator Lakey** suggested adding the wording "required by the county as to where the item was being recorded". **Executive Director Simila** expressed a concern as to how to make the change. **Senator Lakey** suggested the Board, during the next Legislative Session, take a look at adding the wording "required by the county where the plat is recorded" to make it clear who is imposing the requirement.

Senator Schmidt referred to the phrase, "the most current corner records" and said it seemed to be inconsistent with **Docket No.10-0103-1401**. **Executive Director Simila** indicated there were problems with putting all of the corner records on the map. The rule change will add corner records be put on the form.

Vice Chairman Patrick reminded the Committee this legislation was for a print hearing only. He wanted to know if the Committee wanted to hold this RS, discuss it, or send it to print. **Senator Lakey** added he would like to have the wording of the RS changed with his recommendation.

MOTION: **Senator Lakey** moved to hold **RS 23250** for modification. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 23215: **Relating to Engineers and Land Surveyors.** Due to lack of time, this RS was continued to another meeting.

PRESENTATION: **Idaho Trade Managers. Megan Ronk**, Department of Commerce (Department), introduced the international trade managers. She said through a joint effort between the Department and the Department of Agriculture, the State has three international trade offices in Mexico, Taiwan, and China. She introduced **Armando Orellana**, Manager of the Idaho Trade Office in Mexico, and **Xu Fang**, Manager of the Idaho Trade Office in Shanghai. **Mr. Orellana** made a PowerPoint presentation on the accomplishments of his office during 2014. He reported the economy in Mexico was growing in spite of worldwide financial challenges and for the first time in 20 years inflation has gone down. The latest figures show Idaho exports to Mexico were up 6.25 percent from the previous year. **Mr. Orellana** commented he was able to make presentations to various companies about investing in Idaho. Alpura was one of those companies. Major retailers from Mexico have visited Idaho. He noted there was an Idaho bean seed plot in central Mexico, which was being tested.

He highlighted country events. He said the Latin American Dairy Convention

had displays from dairy processors from Idaho: Glanbia, High Desert Milk, and Lactalis. In addition, Quest Aircraft expanded their presence in the region with a representative for Latin America. He said other highlights were that the mountain states were the sole suppliers of a major mustard processor, main grain importers were in contact with Idaho exporters, Uclear was selling to a motorcycle distributor, and Idaho universities were sending interns to the agricultural industry in Mexico. He said he was excited about the upcoming events of Governor Otter's trade mission in May, the bean seed test plot in Sinaloa, the exposure of Idaho companies to the major infrastructure, and telecommunication projects.

Senator Martin asked Mr. Orellana where his office was located. **Mr. Orellana** replied it was in Guadalajara. **Senator Lakey** and **Mr. Orellana** had a conversation about yellow beans which were developed at Boise State University and the encouragement of Mexican farmers to grow the beans. **Mr. Orellana** remarked that farmers can buy beans directly from Idaho rather than going through a middleman.

Xu Fang, reported on the China Trade Office accomplishments. He said China's Gross Domestic Product (GDP) showed a growth of 7.4 percent in 2014. He stated the United States was the second largest trade partner with Taiwan. He said the fastest-growing market as United States exports over the past decade. There was 18.37 percent growth in Idaho exports from 2013-2014. **Mr. Fang** reported Taiwan wanted to attract businesses. He noted that 25 percent of travelers from Taiwan visit the United States.

Mr. Fang highlighted the upcoming events. The China International Education Expo will be happening in March, the China Outbound Travel and Tourism Market (COTTM) in April, the International Expo (IE) in May, the 13th China Husbandry Expo in May, the China International Horse Fair in September, and the China Education Expo in October. He said 2015 marks the thirtieth anniversary of the Shanxi province sistership with the State of Idaho. The focus for 2015 will be on agricultural machinery, education, mining equipment, and the potential for other opportunities.

Mr. Fang explained Idaho's China Trade Office has five full-time staff members and their team represents a total of 40 years working with United States companies and industry groups, who have experience with marketing and market access.

Vice Chairman Patrick complemented the Idaho trade managers for all of the work they have done during the past year. **Senator Lee** said she appreciated the opportunity to review their accomplishments, and she found it interesting and exciting to see exports from Idaho in their countries.

ADJOURNED: There being no further business, **Vice Chairman Patrick** adjourned the meeting at 2:50 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 05, 2015

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve - January 22, 2015	Senator Martin
<u>RS23215</u>	Relating to Engineers and Land Surveyors	Keith Simila, Executive Director
<u>RS23230</u>	Relating to State Purchasing	Bill Burns, Administrator, Division of Purchasing
PRESENTATION:	Update on Tax Reimbursement Incentive	Jeff Sayer, Director, Department of Commerce
DOCKET NO.		
<u>28-0401-1402</u>	Rules Governing the Idaho Reimbursement Incentive Act	Jeff Sayer, Director, Department of Commerce
<u>12-0110-1401</u>	Department of Finance - Rules Pursuant to the Idaho Residential Mortgage Practices Act	Michael Larson, Bureau Chief

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 05, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of January 22, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 23215: **Relating to Engineers and Land Surveyors.** **Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said this RS has the support of the Idaho Society of Professional Land Surveyors, the American Council of Engineering Companies, and the Idaho Society of Professional Engineers. The amendment will remove the lack of clarity that now exists in the law regarding license renewals. Idaho Code § 54-1216, makes renewal of a license contingent only on the payment of a renewal fee. Idaho Code § 54-1220 authorizes the Board to refuse to renew a license as part of a disciplinary action. The change in statute will clarify that the completion of administrative requirements provided by Idaho's laws and rules, in addition to the payment of a renewal fee, is a condition of license renewal.

Executive Director Simila said currently more than 10 percent of licensees and certificate holders renew late. The amendment provides incentives to renew on time by adjusting the late fee for renewal of licenses and certificates from 20 percent (\$20) per month to 50 percent (\$50) per month, and the maximum late fee from \$300 to \$500. More on-time renewals will reduce the workload of the office staff that send late renewal notices. Continuing Professional Development (CPD) compliance will be monitored. A new provision will allow first time CPD violators the option to request a \$400 fine in lieu of discipline. Disciplinary actions are published for ten years and are reported to other states. Most licensees found with CPD violations prefer to avoid discipline and are expected to utilize this provision.

The law requires five Board members consisting of one licensed professional land surveyor and four licensed professional engineers. Currently, the Board has one member who is professionally licensed as both a land surveyor and an engineer. The Board sees great value in retaining two surveyors as members in perpetuity, as having two opinions on the same issue provides for better insight into the questions and concerns related to the land surveying profession. Examining the demographics of licensees who reside in Idaho, the Board discovered that future dual licensed Board candidates are significantly decreasing in numbers. The average age of dual licensed candidates is 68. Additionally, better representation both geographically and between engineering disciplines is beneficial. The amendment will change Board membership to seven members, two land surveyors and five engineers.

Senator Heider wanted to know why some licensees did not renew on time. **Executive Director Simila** said he found that very odd as well and did not understand either. He said if a licensee was deployed overseas, they could ask for a deferment in renewing their license.

Senator Cameron asked whether or not the fee should be paid to the Board or to some other entity. **Executive Director Simila** said the provision of paying the renewal fee to the Board was drafted by an attorney. The fees are put into a dedicated account.

MOTION: **Vice Chairman Patrick** moved to send **RS 23215** to print. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

RS 23230: **Relating to State Purchasing. Bill Burns**, Administrator, Division of Purchasing (Division), reported the proposed legislation alphabetizes definitions in the purchasing statute. The proposal is in response to agency input received from the Office of Performance Evaluations (OPE) report, "Strengthening Contract Management in Idaho" and during negotiated rulemaking. In 2013, HCR 18 was passed to state the Division would develop a plan to respond to the OPE report with components of that plan identified. In 2014, the Division issued the response plan to the Joint Legislative Operations Committee.

As a response to the recommendations of the OPE report and input from users, there was a recommendation that the Division work with the office of the Attorney General to review sections of the Idaho Administrative Code related to the procurement process.

Senator Cameron wanted to know what the reason was for defining secondary waste in contract law. **Keith Reynolds**, Department of Administration, said he had nothing to add, but would get an answer for Senator Cameron. **Senator Cameron** commented he thought some of the wording was repeated from old code. He said he wanted to know how significant the differences were in the definitions. **Administrator Burns** stated the changes were a restatement and an alphabetization of the definitions in order to make it more user-friendly. **Senator Cameron** commented he found it interesting that a bill would be passed to re-alphabetize definitions.

MOTION: **Senator Cameron** moved to send **RS 23230** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Chairman Tippets welcomed students from Century High School who were visiting.

PRESENTATION: Update on Tax Reimbursement Incentive. Jeff Sayer, Director, Department of Commerce (Department), gave a PowerPoint presentation. He talked about Project 60, Idaho Annual Exports, and the Idaho Lodging Tax. He said Idaho has the fifth highest growth rate in the United States. Manufacturing has the eighth highest growth rate. Idaho has the sixth lowest unemployment rate and outpaced the nation in 10 out of 15 industry categories. **Director Sayer** said that according to the Heartland Institute, Idaho is fifth for having the best economic outlook. Bloomberg said Idaho is fifth in the economic health index and Kiplinger reported Idaho is sixth for the fastest job growth.

Included in the Idaho Global Entrepreneurial Mission (IGEM) funding is the Center for Advanced Energy Studies (CAES) of \$2 million, the Higher Education Research Council (HERC) of \$2 million and Commerce for \$1 million. He reported on IGEM research grants with Boise State University receiving 25 percent, the University of Idaho at 45 percent and the following companies: Bio Cement, GenZ Sprayer, High Speed Digital Modeling, and Nanofabrication System at 30 percent.

The Idaho Opportunity Fund (IOF) has awarded \$1.9 million to date to GoGo Squeeze in Nampa (\$350,000 - 150 jobs); Fulact in Rupert (\$350,000 - 100 jobs); Clif Bar in Twin Falls (\$800,000 - 250 jobs); and Cives Steel-Ucon (\$400,000 - 210 jobs).

Director Sayer talked about the Tax Reimbursement Incentive and said that since July 1, 2014 there have been 9 approved projects and 1,710 total jobs created. The capital investment was \$317 million and total wages were \$573 million. New state revenue amounted to \$75 million. He projected 1,700 new jobs will be created. **Director Sayer** indicated the highest priority was recruiting and training skilled talent.

Director Sayer talked about Accelerate Idaho. He said the State would have to focus on priorities in order to move the economy forward. He explained that agricultural technology is one of Idaho's greatest assets.

Director Sayer said that when the Department looked at population growth, most of the 108,000 people projected to move to Idaho were 65 years old or older. He said the State is 95,000 workers short in order to fuel growth. The big trends in industry point to the recruitment of talent. States are figuring out that talent is critical to growth.

Vice Chairman Patrick commented he was concerned about small communities dealing with growth. **Director Sayer** replied the world is moving so quickly communities need to be prepared. Infrastructure has to be in place. He pointed out there are not many vacant buildings, and businesses are looking for the fastest path to production. He said broadband and air travel both need to be expanded. Some rural areas are not prepared for growth, and because of that, communities need help. **Vice Chairman Patrick** and **Director Sayer** discussed the fallout for some small communities who are not receiving help with growth. **Director Sayer** pointed out the Department will have to figure out how to make investments in rural areas without an increase in taxes.

Senator Schmidt talked about a rural partnership with communities and how it tied in very closely with the need to develop rural areas.

Senator Lakey asked what needed to be done to recruit talented employees. **Director Sayer** said implementing Choose Idaho was a fascinating step forward.

Megan Ronk, Chief Operating Officer, Department, talked about the overall results of nine projects. She said the overall average for grant awards and tax incentives was 22 percent for 8 years. Amy's Kitchen received 26 percent for 15 years.

**PASSED THE
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

**DOCKET NO.
28-0401-1402:**

Rules Governing the Idaho Reimbursement Incentive Act. **Megan Ronk**, Chief Operating Officer, Department of Commerce (Department), reported that on July 1, 2014, the Department adopted the temporary rules of the Idaho Reimbursement Incentive Act (IRIA). The adoption of temporary rules was necessary to fulfill the requirements of the new IRIA as enacted in H 546 and to commence the possible award of a Tax Reimbursement Incentive (TRI) credit to businesses seeking expansion within the State of Idaho. While operating under temporary rules, the Department further refined and established the necessary applications, templates, workflow processes, incentive agreements and other supporting documentation necessary to execute the IRIA. During the development of the processes, the Department sought the input of key stakeholders, including other agencies, economic development professionals, and companies through solicited feedback

and meetings.

This rule will incur no cost to the General Fund to initiate. The program is designed to reimburse taxes actually paid and will perpetually generate the revenues needed to fund the incentive. Incentives will be no more than 30 percent of taxes paid, leaving a minimum of 70 percent of all new state tax revenue in the treasury. Incentives will last a maximum of 15 years.

Negotiated rulemaking was not conducted. However, the Department sought the input of a variety of parties throughout the State with specific information, knowledge, expertise and technical information about economic development and business expansion. Feedback was gathered from the Office of the Attorney General, Idaho State Tax Commission (Tax Commission), local economic development professionals, site selectors, corporate decision-makers and corporate legal counsels.

Chairman Tippetts asked for an explanation of .08d of the rule where an approval or rejection from the Economic Advisory Council (EAC) shall not be considered a contested case. **Chief Operating Officer Ronk** said there was an opinion rendered by the Attorney General and the information dealt with rejecting an application. She said that if an application was rejected, the party could not directly appeal to the Council.

Chairman Tippetts questioned terminating or suspending a tax credit if the information provided was deemed to be inadequate or inaccurate. He wanted to know if an entity would be allowed to have a judicial review if they did not meet requirements. **Chief Operating Officer Ronk** replied when the EAC rendered a decision whether or not to extend tax reimbursement to a client, the contract language identified the legal remedies in case of a dispute.

Chairman Tippetts wanted to know the definition identified by the Tax Commission of "in good standing." **Chief Operating Officer Ronk** stated the Department works with the State Tax Commission and that a letter verifying "in good standing" was something used at the request of a business for a variety of reasons. The letter indicates whether the company is completely free and clear of tax issues.

Chairman Tippetts pointed out on page 164 under 200.AUDIT, the last sentence should read "as necessary as a result of those recommendations." He mentioned **Chief Operating Officer Ronk** may want to consult with the Office of Administrative Rules.

Senator Schmidt referred to the actual costs and economic benefits of the tax credit commitments the Department made and wanted to know how that would be done in terms of revenue that is forgiven as a tax credit. **Chief Operating Officer Ronk** said the cost of projected wages and revenues were projected as a net benefit to the State for a particular year. She said the language was fairly broad and the Department would be receiving feedback on an annual basis. The intent was to insure the Department had transparency. **Senator Schmidt** indicated that if a third party was involved in the report, that would add to the transparency. **Chief Operating Officer Ronk** replied there was a third party audit requirement already in place.

Senator Lee commented she was excited about attention being paid to rural communities.

MOTION:

Senator Lee moved to approve **Docket No. 28-0401-1402**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
12-0110-1401:**

Department of Finance - Rules Pursuant to the Idaho Residential Mortgage Practices Act. **Michael Larson**, Bureau Chief, Department of Finance (Department), said this rule incorporates by reference the most recent changes to Regulation X, Regulation Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act. If the most recent changes to federal law were not included in Idaho law, mortgage loan originators would have two differing sets of laws to follow.

Bureau Chief Larson said negotiated rulemaking was not conducted because this rule is simple in nature as it merely updates recent changes to two federal rules and two federal statutes incorporated by reference into the Idaho Residential Mortgage Practices Act. The federal rules and statutes have been amended and the rule needs to be amended. The Department is not aware of any opposition.

Senator Martin commented he appreciated including a specific date in amending this rule.

MOTION:

Senator Lee moved to approve **Docket No. 12-0110-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:52 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #3
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 10, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approval of Minutes for January 29, 2015	Senator Heider
<u>H 14</u>	Labor and Materials Liens on Motor Vehicles - ID Transportation	Amy Smith, ID Transportation Department
<u>RS23431C2</u>	Relating to Land Surveying	Keith Simila, Executive Director, Board of Professional Engineers and Land Surveyors
<u>RS23315C3</u>	Relating to Direct Medical Care Act	Representative Luker
<u>RS23360C1</u>	Relating to Cosmetology	Kris Ellis, Idaho Cosmetology School Association
DOCKET NO.		
<u>38-0501-1401</u>	Rules of the Division of Purchasing	Sarah Hilderbrand, Deputy Administrator, Division of Purchasing
<u>59-0106-1401</u>	PERSI Retirement	Don Drum, Administrative Director, PERSI
<u>59-0201-1401</u>	Rules for Judges' Retirement Fund	Don Drum, Administrative Director, PERSI
<u>59-0103-1401</u>	PERSI Contribution Rules	Don Drum, Administrative Director, PERSI

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 10, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee and Ward-Engelking

ABSENT/ EXCUSED: Senator Schmidt

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

H 14: **Labor and Materials Liens on Motor Vehicles - Idaho Transportation.** This bill will be sent back to the floor for consideration by the Transportation Committee.

MOTION: **Senator Martin** asked for unanimous consent to send **H 14** back to the floor of the Senate for consideration by the Senate Transportation Committee. There were no objections. **Senator Lakey** disclosed for the record that Victor Gallegos is one of his law partners and has done some work with the Idaho auto dealers.

RS 23315C3: **Relating to Direct Medicare Act. Representative Luker** said this bill creates a simple format for Direct Medical Care agreements as a method for providing cost effective and personalized routine health care services on a contract, non-insurance basis. The bill provides basic definitions and contract requirements, describes applicable scope of practice, and exempts such agreements from regulation by the Department of Insurance (DOI). Services provided under such agreements can be recognized as "Direct Primary Care" under Section § 1301(3) of the Patient Protection and Affordable Care Act (PPACA) and constitute an allowable component of a qualified health care plan under the PPACA.

Representative Luker said it is the policy of the State of Idaho to promote personal responsibility for health care and the cost-effective delivery of medical services by encouraging innovative use of direct patient-provider practices for primary and specialty medical care. Direct patient-provider practices utilize a model of periodic fees for provider access and medical management over time, rather than simply a fee for visit or procedure service model. Some patients and medical providers may wish to establish direct relationships with one another as an alternative to traditional fee-for-service care financed through health insurance. The purpose of this act is to confirm that direct patient-provider arrangements that satisfy the provisions of this chapter do not constitute insurance. He summarized the definitions and outlined direct care provisions. **Representative Luker** said a medical provider cannot bill an insurer for the services provided under a direct care agreement; however, a patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This limitation does not prohibit a direct medical care provider from billing insurance for services not provided under a direct care agreement. He pointed out that direct care agreements are not subject to regulation as insurance under Idaho Code, Title 41.

Representative Luker said a direct care agreement must have the following disclaimer: "This agreement does not provide comprehensive health insurance

coverage. It provides only the services described herein. It is recommended that insurance be obtained to cover medical services not provided for under this direct care agreement." He said a direct care agreement may not be sold or transferred by either party without the written consent of the other party to the agreement. A direct care agreement may not be sold to a group, employer or group of subscribers because it is an individual agreement between a medical provider and a patient. These limitations do not prohibit the presentation of marketing materials to groups of potential patients or their representatives.

Senator Lakey wanted to know if the definition of health care services was broad enough to include medical, dental and chiropractic. **Representative Luker** and **Senator Lakey** discussed the scope of services, the terms of agreement and the termination clause. **Vice Chairman Patrick** commented a patient could go to the doctor and negotiate the price with no money changing hands. **Representative Luker** replied there would be a monthly or periodic payment. **Senator Martin** and **Representative Luker** discussed direct medical care agreements currently in use. **Senator Lee** and **Representative Luker** talked about current insurance policies available in the State of Washington that provide these services.

MOTION: **Senator Patrick** moved to send **RS 23315C3** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Tippetts passed the gavel to Vice Chairman Patrick.

RS 23431C2: **Relating to Land Surveying.** **Michael Kane**, Attorney, representing the Board of Professional Engineers and Land Surveyors (Board), explained this amendment changes the definition of land surveying in Idaho Code to better align with actual practice, improves consistency with surrounding states, and reduces barriers for young professionals to enter the land surveying profession.

He said the current definition describes land surveying as including only boundary surveying and certifying elevations (for Federal Emergency Management Agency (FEMA) (flood insurance purposes). The Board has worked with the Idaho Society of Professional Land Surveyors and other stakeholders to update the definition in law for the following reasons:

1. Land surveyors are called upon by Idaho statute to safeguard the life, health, and property of the general public. Under the current law, land surveyors are only licensed to work on property boundaries, yet are asked by their clients to sign and seal work that they perform which is not authorized by code. The updated law will include all the services land surveyors routinely provide to their clients and the public.
2. The current law is a barrier to entry for new professionals. Very few young surveyors are entering the workforce and becoming licensed professional land surveyors since they can only credit boundary surveying experience toward the four-year experience requirement. The current law has the effect of extending the experience requirement timeframe for licensure for most survey interns from the minimum four years to eight or more years as boundary surveying comprises only about of one third of the work for most survey businesses.
3. The states surrounding Idaho have recognized the need to protect their public by revising the definition of land surveying to better reflect what surveyors are called upon to do in their states and to recognize the experience and judgment of a licensed professional land surveyor. The new definition will enhance mobility of licensure with other states.

4. Land surveyors must pass two examinations to become licensed. These are national examinations that test for technical competence. The professional land surveyor examination contains questions that are included in the updated definition of land surveying. Test questions relating to the current definition of land surveying in Idaho (boundary surveying) are only 38 percent of the total test. Land surveyors must be competent in the full suite of land surveying services included in the new law in order to pass the professional examination.

Senator Heider asked for an explanation of licensing and permits as they applied to a homeowner. **Mr. Kane** referred to "authoritative" and said it means land surveying must be certified by a professional land surveyor in accordance with established principles of professional land surveying when used to describe products, processes, applications or data resulting from the practice of professional land surveying. However, homeowners are exempt.

Senator Lakey referred to "professional land surveying" and "practice of professional land surveying" and wanted to know if any member of the public would be exempted from having a license. He commented he would want to make sure local government would require a permit. **Mr. Kane** said the Board does not require nor issue a permit and that permits are issued by the cities.

Senator Heider said that in the past, certifying elevations has not been the prerogative of a surveyor, but under this legislation, would a land surveyor have to certify an elevation. **Mr. Kane** said for the past two years, certifying has been done.

MOTION:

Senator Martin moved to send **RS 23431C2** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Heider moved to approve the Minutes of January 29, 2015. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippets.

RS 23360C1:

Relating to Cosmetology. **Kris Ellis**, representing the Idaho Cosmetology School Association and the Northwest College Federation, said the purpose of this legislation is to reduce the number of hours required to be a cosmetologist while still allowing schools to teach additional hours as a business decision if they so choose.

Ms. Ellis said this was a simple change that lowers the hours required to be a cosmetologist from 2,000 to 1,600 hours while continuing to allow schools to teach the 2,000 hours. Thirty-eight states require 1,600 hours or less. Many of these states require the same exam or even a more comprehensive exam than Idaho. The reduction to 1,600 hours will mean students will complete their training approximately 4 months earlier, saving on student loans and allowing them to get into the workforce sooner. **Ms. Ellis** reported it was important to note that the schools' accrediting body requires that they maintain a 70 percent placement rate. The schools cannot simply teach more students, they must ensure that those students have jobs as well. This change will benefit not only the students but the State of Idaho.

Senator Cameron had a discussion with **Ms. Ellis** about the history of the change in required hours. **Ms. Ellis** said these changes were submitted to the Board of Cosmetology (Board) in 2012. The Board expressed a desire to keep the 2,000 hour requirement in place. Currently, the Board has decided to take up this issue. **Ms. Ellis** said the cosmetology schools could see how the reduction in hours would help a student obtain a job more quickly. She said the 2,000 hour requirement has been in place since the 1940's. She said many students have said the 1,600 hour

requirement would help them enter into the workforce in a timely manner. She did not feel those students who had taken the 2,000 hour required class would see the reduction in required hours as a diminishment of their license.

Chairman Tippets disclosed for the record he has a son who is associated with the same firm as Ms. Ellis.

MOTION: **Senator Heider** moved to send **RS 23360C1** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Tippets passed the gavel to Vice Chairman Patrick to introduce the presenter for the rules review.

DOCKET NO. 38-0501-1401: **Rules of the Division of Purchasing.** This rule was presented by **Sarah Hilderbrand**, State Purchasing Manager, Division of Purchasing (Division). She said this proposed rules revision clarifies the processes of state agency purchasing and the new rules address processes for high dollar service contracts and for contract administration and management. She gave an overview of the Division and went over the rule changes.

She said the proposed rules have two predominant areas of fiscal impact. First, proposed required training will require an expansion of the training program at the Division of Purchasing with a total budget impact estimated at less than \$245,800 annually. The current fee structure applied to executive contracts is sufficient to fund the expenditure increase. Second, the proposed rules requiring an oversight board, management by a professionally certified project manager, and third party validation for service contracts in excess of \$5 million will have a fiscal impact at the agency level. The fiscal impact to individual agencies will vary widely depending on the oversight procedures currently in place and the number of contracts that fall into the high value definition.

Negotiated rulemaking was conducted. The Division received a significant amount of agency input. The Division also met with several agencies to discuss the proposed changes and the potential impact on the agency. While agencies had few comments on the majority of the proposed changes, the primary concern expressed was related to the cost and time involved with increased monitoring and creation of an additional layer of oversight. Through these meetings an exemption process was drafted to exempt certain service contracts from some aspects of oversight and to recognize an agency's internal core competencies currently in place for the subject matter of the contract. The proposed exemption process was a product of the negotiated rulemaking process. It was an attempt to recognize an agency's documented expertise in these areas.

Senator Cameron said he had a number of questions. He wanted to know if the deletion of the definition of "agency" was replaced somewhere else in the rule. **State Purchasing Manager Hilderbrand** stated the definition was in Idaho Code. **Senator Cameron** and **State Purchasing Manager Hilderbrand** discussed the exemption of elected officials from using the Division under the high value contract rules. **Senator Cameron** said there was a request in the Division's budget for \$245,000, which was the increased cost to the Department of Administration (DOA), for the new definitions of the high value contract. He wanted to know what the fiscal impact would be to State government and agencies. **State Purchasing Manager Hilderbrand** said the amount represents two training officers as well as a training management system, in addition to the rule changes. The Division wants to expand the training program to include updating manuals, templates, forms, and statewide outreach. She said the fiscal impact on other state agencies would be difficult to say, as it depends on the complexity of the contracts. She also said there were some agencies who were out-of-compliance with the rules. She said with the

revision of the rules, agencies will take the cost of a project into consideration when they submit budgets.

Senator Cameron expressed a concern about the purchasing system. He was also concerned about the high dollar value contract provision and the shift of responsibility from the DOA to the agencies in monitoring and the potential costs. He said the Department of Health and Welfare (DHW) will cost over \$1 million a year, Idaho Transportation Department (ITD) will cost over \$500,000 a year. He said that even though the Division tried to follow the Office of Performance Evaluations (OPE) report, Strengthening Contract Management in Idaho, there were distinct differences for that report. One requirement in the OPE report required the DOA to monitor the contracts, but the Division has decided that should be done at the local agency level. He asked State Purchasing Manager Hilderbrand to speak to how the decision protects taxpayers and why the State should be obliged to incur additional expense. He viewed oversight as the responsibility of the DOA and not of the agency itself. **State Purchasing Manager Hilderbrand** referred to the volume of contracts in the amount of \$1.6 billion as the value of current contracts that would meet this rule. The rule would not be applied retroactively to the contracts as many already have monitoring in place. She said looking forward, the Division has estimated from four to six new contracts per year that would fall within the high dollar contract definition. Several of the contracts may fall within the exemptions as most of the contracts belong to DHW. The Division is looking for new services and Information Technology (IT) projects, which are the highest risk. If there is a \$15 million contract and there is not proper monitoring, validation and verification in place and the contract fails, the cost is unknown. Consequently, the failed contract would have to be rebid. She said the change in the rule was an attempt by the Division to put monitoring in place. The Division would be apprised of the health of the contractual agreement.

Senator Cameron said it would seem that an imbedded monitor can be caught up in the excitement of a new contract and the duties of the contract within the agency. He wanted to know if the State would be safer having a separate entity in the DOA which would monitor the contract to make sure it was compliant with all of the provisions of the law and not necessarily vested in the success of the contract. **State Purchasing Manager Hilderbrand** said it was the intent of the Division to have an independent evaluation verification with a third party. The Division wanted the monitor to be an objective, qualified person. **Senator Cameron** said he was not in favor of some of the portions of the rule. Having elected officials being exempt from the process is also problematic. The OPE report recommended including elected officials under the same provisions of purchasing. The Division has decided to exclude elected officials and he wanted to know how that was in the best interest of the taxpayer. **Ms. Hildebrand** said the response from OPE was that the Division did not have the authority to impose rules on elected officials.

Senator Ward-Engelking referred to the last sentence in Section 033. of the rule, which reads, "all acquisitions of telecommunication and information technology property will conform to the guidelines and policies established or adopted by the governing or policy board or council created by statute or directive for the purpose of information technology oversight or review." She said the sentence seemed to give all of the power to the administrator or to the Board, which sounded like vendors could do whatever they wanted. **State Purchasing Manager Hilderbrand** said this refers to the IT standards for technology for consistency in economy of scale as well as for communication between agencies. She said it was not highly restrictive.

Vice Chairman Patrick expressed a concern with the same section.

Chairman Tippetts stated that in addition, the Division has clarified and modernized

the existing rules to reflect the process currently used by the State. He said it sounded as though the process was being changed along with the rules to be in conformity with the new process. **State Purchasing Manager Hilderbrand** said the statement refers to the removal of "telegraph" and adding "electronic signatures" and the formal invitation to bid, requests for proposals and the informal process. **Chairman Tippetts** asked State Purchasing Manager Hilderbrand to explain what was changing for some agencies in the way of responsibility that they have not had in the past. **State Purchasing Manager Hilderbrand** explained that Section 041. applied to solicitation procedures and Section 125. applied to contracts in place. Both contain similar requirements of hiring a third party subject matter expert to do an independent validation and verification. This person would be involved in the solicitation process, but also during the administration of the contract. The third party would work with the agency and the Division to assemble the solicitation documents. The solicitation document becomes the contract. The Division wants to put emphasis on the planning stage because the terms, conditions and requirements need to be placed into the solicitation document, as the contract is very difficult to amend at the end of the process.

Chairman Tippetts referred to the anticipated cost to DHW of \$1 million and wanted to know if the DHW expressed a concern about the additional cost. **State Purchasing Manager Hilderbrand** said DHW did express concern because they have the majority of the high value contracts. She said that was why the Division put in an exemption based on the comments from DHW. She said the Division did not anticipate the cost to be \$1 million.

Senator Ward-Engelking wanted to know if there was code that added to Section 33., because this section appeared to be very broad for the vendors. **State Purchasing Manager Hilderbrand** said the code was already in place, and this section in the rules would reference code.

Senator Lakey wanted to know where the definitions that were removed were. **State Purchasing Manager Hilderbrand** said they were all in Title 67. **Senator Lakey** asked about the small purchase categories and the \$10,000 exemption, the \$100,000 purchase that would have to be bid and how the amounts in between were covered. **State Purchasing Manager Hilderbrand** said that an agency can procure up to \$10,000, unless there is already a contract. Amounts between \$10,000 and \$100,000 are handled by an informal request for a quote. This is not a sealed bid.

Vice Chairman Patrick announced that this rule and the other three rules would be scheduled for another meeting due to lack of time.

ADJOURNED: There being no further business, **Vice Chairman Patrick** adjourned the meeting at 3:00 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 12, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of Minutes for January 27, 2015	Senator Lakey
<u>RS23536</u>	Relating to Correctional Industries	Senator Hill
<u>RS23385</u>	Relating to a Benefit Corporation Status	Senator Winder
<u>RS23483</u>	Relating to Death Certificates	Senator Schmidt
<u>RS23511</u>	Relating to Mortgage Guarantee Insurance	Colby Cameron, U.S. Mortgage Insurers
<u>RS23250C2</u>	Relating to Engineers and Land Surveyors	Keith Simila, Executive Director Prof. Engineers and Land Surveyors
<u>RS23461C1</u>	Relating to Genetic Counseling	Jennifer Eichmeyer, Genetic Counselor
<u>RS23593</u>	Relating to Self-funded Health Plans for Higher Education Employees	Joe Stegner, University of Idaho, Special Asst. to President for State Government Relations

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 12, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Cameron

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of January 27, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 23536: **Relating to Correctional Industries.** **Senator Hill** said this legislation clarifies that Idaho inmates working for private agricultural employers under contract with Idaho Correctional Industries are not entitled to workers' compensation or unemployment compensation. This has been the understanding and practice under such contracts and this change is intended to remove ambiguity in the current statute. Because this legislation simply clarifies the practice and intention of Idaho Correctional Industries, there is no significant fiscal impact to the State.

Senator Hill said that each prisoner who is engaged in productive work may receive compensation for his work as the Department of Corrections Board (Board) shall determine, to be paid out of any funds available in the Correctional Industries Betterment Account. Such compensation, if any, shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance. Compensation shall be credited to the account of the prisoner and paid from the Correctional Industries Betterment Account.

Nothing in this section or in this act is intended to restore, in whole or in part, the civil rights of any inmate. No inmate who is compensated under this act shall be considered to be an employee of or employed by the State, the Board of Corrections, or any private agricultural employer that is a party to a contract for inmate labor pursuant to Idaho Code § 20-413A. No inmate engaged in productive work as authorized by this chapter shall be entitled to workers' compensation under Idaho Code Chapter 4 or Chapter 13, Title 72, whether on behalf of himself or any other person.

MOTION: **Senator Lakey** moved to send **RS 23536** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 23385: **Relating to A Benefit Corporation Status.** **Senator Winder** said a benefit corporation is a new class of corporation that voluntarily meets higher standards of corporate purpose, accountability and transparency. Twenty-six states and the District of Columbia legally recognize benefit corporation status. Benefit corporation status does not affect a company's tax status, and a company does not have to receive certification to hold benefit corporation status.

He said the purpose of this legislation is to create the addition of a new chapter and title of Idaho Code to establish incorporation requirements for benefit corporations, to define benefit corporations, and to outline the process to adopt and terminate benefit corporation status. Standards of conduct and rules are outlined for directors, benefit directors, officers and benefit officers. This legislation also outlines the means to bring an action on behalf of a benefit corporation, requires an annual report of benefit corporations and makes that report available to certain persons and the public. There will be no fiscal impact to either the General Fund, or to county and local governments.

MOTION: **Senator Schmidt** moved to send **RS 23385** to print. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

RS 23483: **Relating to Death Certificates.** **Senator Schmidt** said the Association of Funeral Home Directors would like help. He said that currently in Idaho, if someone dies without directions for disposal of remains or with uncovered provisions in a prearranged funeral plan, Idaho Code § 39-270(b) does not acknowledge this person as having a "direct and tangible interest" for obtaining a death certificate. This amendment clarifies that the person with authority to designate disposition of remains should be considered a person with a "direct and tangible interest" and entitled to receive an official death certificate.

MOTION: **Senator Martin** moved to send **RS 23483** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 23511: **Relating to Mortgage Guarantee Insurance.** **Colby Cameron**, representing United States Mortgage Insurers, said the proposed legislation repeals Idaho Code § 41-2653(1), which requires that a mortgage guaranty insurer retain no more than 25 percent coverage of the borrower's indebtedness to the insured lender. The 25 percent coverage limitation contained in Idaho Code § 41-2653(1) never achieved its intended purpose to spread risk and draw new capital to the industry. The section is out of date. There is no fiscal impact. **Mr. Cameron** said he spoke with the Department of Insurance and other entities, and there was no opposition.

MOTION: **Senator Patrick** moved to send **RS 23511** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 23250C2: **Relating to Engineers and Land Surveyors.** **Keith Simila**, Executive Director, Department of Professional Engineers and Land Surveyors (Department), said this amendment corrects inconsistencies in platting and mapping requirements. Plats and Record of Survey (ROS) maps are required to have the same minimum features such as north arrow, graphic scale, and bearing and distances for better consistency. Plat and ROS map media requirements are updated and made consistent in all three sections of Idaho Code to remove outdated media specifications. Requirements are changed to list only the most current corner record on the ROS map to make it more concise. A technical correction ensures monuments set by Idaho licensed land surveyors are protected from defacement.

The amendment allows graduate and related science students to take the Fundamentals of Engineering (FE) examination prior to graduation, instead of

after graduation. It also simplifies the application process to make it easier for all students to take fundamentals of engineering or fundamentals of surveying examinations. Students will take the examination without first applying to the Board of Professional Engineers and Land Surveyors (Board). After passing the examination, they will apply to the Board for their intern certificates.

Executive Director Simila said this is the second print hearing for this bill. The bill was heard earlier by the Commerce and Human Resources Committee (Committee) on February 3, 2015. The Committee requested a minor change in one section to bring better clarity to the requirement of applying a protective coating to a plat prior to recording in a county courthouse. The phrase now clarifies the coating for archival permanence may be required "by the county where the plat is recorded."

There is no impact to the General Fund or to the dedicated funds.

Senator Heider thanked Executive Director Simila for making the minor changes.

MOTION:

Senator Heider moved to send **RS 23250C2** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 23461C1:

Relating to Genetic Counseling. **Jennifer Eichmeyer**, Genetic Counselor, St. Luke's, said this legislation creates a licensing system and licensing requirements for genetic counselors. The legislation provides a short title and definitions and defines the scope of practice for genetic counselors, which includes interpreting family and medical histories to assess risk of disease, educating families about inheritance, genetic testing, disease management and prevention, and ensuring that genetic information is used appropriately in the delivery of medical care. Recognizing that genetic counseling profoundly affects the lives of people of the State of Idaho, it is the purpose of this act to set standards of qualification, education, training and experience, and professional competence for those who engage in the practice of genetic counseling and to protect the public from unprofessional conduct by both unlicensed persons and persons licensed to practice genetic counseling.

There will be no fiscal impact on state or local funds.

Vice Chairman Patrick wanted to know how a genetic counselor would access medical records. **Ms. Eichmeyer** said there would be no access without permission from the patient. **Senator Martin**, **Ms. Eichmeyer** and **Chairman Tippetts** had a conversation about the problems that were encountered last year with this proposed legislation. They discussed the change in the misdemeanor language, the number of genetic counselors in the State and alterations for fees. **Senator Schmidt** suggested that Ms. Eichmeyer speak with Tele-Health about genetic counseling. He remarked there have been significant issues with licensure. **Senator Martin** remarked he was on the task force and Tele-Health was an important issue.

MOTION:

Senator Ward-Engelking moved to send **RS 23461C1** to print. **Senator Lee** seconded the motion.

Senator Lakey asked what was changed in the misdemeanor language. **Ms. Eichmeyer** said the language was changed to follow the same language from other licensure bills. **Senator Martin** wanted to know if counseling was provided for reproductive services. **Ms. Eichmeyer** said genetic counselors do prenatal counseling and that information will be in the bill.

The motion carried by **voice vote**.

RS 23593: **Relating to Self-Funded Health Plans for Higher Education Employees.** **Joe Stegner**, University of Idaho, Special Assistant to the President for State Government Relations, said the purpose of this bill is to reinstate the previous reserve and surplus requirements applicable to the University of Idaho's self-funded health benefits plan prior to changes in 2013 legislation. He said this bill will have no negative impact on the General Fund. Passage will relieve a potential burden on university unrestricted reserves. He said he discussed these changes with the Department of Insurance and with key legislators. He knows of no opposition to this legislation.

Senator Heider wanted to know if it would be beneficial for the junior colleges to have a self-funded insurance plan. **Mr. Stegner** said it was entirely possible, but the value and benefit is predicated on size. He said community colleges are not anticipating having a similar plan, but may ask to be included at a later time.

MOTION: **Senator Lakey** moved to send **RS 23593** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:02 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 17, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approval of Minutes for January 20, 2015	Senator Cameron
<u>S 1081</u>	Self-Funded Health Plans for Higher Education Employees	Joe Stegner, U of I, Spec. Asst. to Pres. for State Govt. Relations
<u>S 1079</u>	Professional Engineers and Professional Land Surveyors	Keith Simila, Executive Director, Prof. Engineers and Land Surveyors
DOCKET NO.		
<u>59-0103-1401</u>	PERSI Contribution Rules	Don Drum, Administrative Director, PERSI
<u>59-0106-1401</u>	PERSI Retirement	Don Drum, Administrative Director, PERSI
<u>59-0201-1401</u>	Rules for Judges' Retirement Fund	Don Drum, Administrative Director, PERSI
<u>59-0103-1402</u>	PERSI Contribution Rules	Don Drum, Administrative Director, PERSI
<u>59-0103-1403</u>	PERSI Contribution Rules	Don Drum, Administrative Director, PERSI
<u>17-0501-1401</u>	Rules Under the Crime Victims Compensation Act	George Gutierrez, Bureau Chief, Industrial Commission

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 17, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed everyone.

S 1081: **Self-Funded Health Plans for Higher Education Employees.** **Joe Stegner**, University of Idaho, Special Assistant to the President for State Government Relations, introduced Kent Nelson, General Counsel for the University of Idaho (University). **Mr. Nelson** said the purpose of this bill is to reinstate the previous reserve and surplus requirements applicable to the University's self-funded health benefits plan prior to changes in 2013 legislation.

Mr. Nelson outlined what a self-funded plan contained. He said statute requires surplus and reserves be established and maintained. A reserve must be maintained in an amount certified by a qualified actuary as being necessary for payment of claims liability. He pointed out a public postsecondary educational institution is required to establish and maintain in its trust fund surplus an amount equal to at least 30 percent of the unpaid claims liability of the plan. This surplus must be maintained at all times throughout the year. **Mr. Nelson** stated the University surplus was approximately \$2.3 million. He said there was an anticipated surplus of \$3.1 million consisting of reserves and surplus. A bill was passed in the 2013 Legislative Session, changing the calculation of the reserve and surplus balances for all self-funded health plans, effective July 1, 2015. The University is faced with having to increase its reserves and surplus to over \$9 million, which is an increase of approximately \$6 million.

He said this bill will have no negative impact on the General Fund. Passage will relieve a potential burden on University unrestricted reserves. He said he discussed these changes with the Department of Insurance and with key legislators. He knows of no opposition to this legislation.

Senator Cameron asked Mr. Nelson to outline the most recent claims history and wanted to know if the University had approached or exceeded the 30 percent unpaid claims liability. **Mr. Nelson** responded the calculation for the 130 percent liability is based on the actuarial calculation of the amount of claims, some of which were unknown. The calculation changes constantly, but reserves are always maintained with trust balances in the excess. He said unpaid claims have never exceeded 30 percent. **Mr. Nelson** indicated he was unaware of the problem. **Ron Smith**, Vice President of Finance, University of Idaho, reported unpaid claims have never exceeded 30 percent.

Vice Chairman Patrick wanted to know how the current calculation related to the change would work. **Mr. Nelson** indicated the current calculation will go into effect on July 1, which removes the 30 percent requirement of the surplus and is replaced with 3 times the monthly expected contributions to the plan. The estimate is approximately \$6 million.

Senator Heider wanted to know if any thought had been given to including two-year colleges. If so, would the base be increased and the price lowered? **Mr. Nelson** responded that at the present, the University is the only institution that has a plan. If the other institutions were included, there would not be an increase in the base.

Senator Schmidt wanted to know the approximate ratio between employees and retirees. **Mr. Nelson** said the vast majority were employees.

MOTION:

Senator Lakey moved that **S 1081** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion.

Senator Lakey commented this was a public entity combined with private entities, which is an important consideration. **Senator Cameron** indicated he would support the bill. He was concerned about the appropriate amount of reserves and that the state may be forced to pay for any additional costs should there be a dilemma in the future.

The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

**MINUTES
APPROVAL:**

Senator Cameron moved to approve the Minutes of January 20, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

S 1079:

Relating to Professional Engineers and Professional Land Surveyors. **Keith Simila**, Executive Director, Department of Professional Engineers and Land Surveyors (Department), said this amendment corrects inconsistencies in platting and mapping requirements. Plats and Record of Survey (ROS) maps are required to have the same minimum features such as north arrow, graphic scale, and bearing and distances for better consistency. Plat and ROS map media requirements are updated and made consistent in all three sections of Idaho Code to remove outdated media specifications. Requirements are changed to list only the most current corner record on the ROS map to make it more concise. A technical correction ensures monuments set by Idaho licensed land surveyors are protected from defacement.

The amendment allows graduate and related science students to take the Fundamentals of Engineering (FE) examination prior to graduation, instead of after graduation. It also simplifies the application process to make it easier for all students to take FE or Fundamentals of Surveying examinations. Students will take the examination without first applying to the Board of Professional Engineers and Land Surveyors (Board). After passing the examination, they will apply to the Board for their intern certificate.

MOTION:

Senator Martin moved that **S 1079** be sent to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

**PASSED THE
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review.

**DOCKET NO.
59-0103-1401:**

PERSI Contribution Rules. Don Drum, Director, Public Employee Retirement System of Idaho (PERSI), said this rule was to delay a scheduled increase in contribution rates of employers and employees. Negotiated rulemaking was not conducted because it would be inconsistent with PERSI's exclusive fiduciary responsibility for plan operations. **Director Drum** said this rule addresses contribution rates and scheduled rate increases. These rules have rate increases scheduled to take effect on July 1, 2015 and July 1, 2016. At the October PERSI Board (Board) meeting, the Board authorized temporary rules to eliminate these scheduled increases. That action is reflected in the temporary rules in **Docket No. 59-0103-1401**. **Director Drum** reported that given the Board's action on the elimination of the rate increases, the Board requests that this pending rule be rejected.

MOTION:

Senator Martin moved to reject **Docket No. 59-0103-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0106-1401:**

PERSI Retirement. Don Drum, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said this rule makes changes to Rule 131 and Rule 132 of PERSI's retirement rules. Both of these rules address what is known as retirement in place for PERSI members. These members are elected or appointed and generally serve on small boards or commissions. Rule 131 applies to a member who works full-time for one PERSI employer and also works minimal hours as an elected or appointed official for a different employer. The rule allows the member to retire from the full-time job and stay on in the part-time elected or appointed position and still collect PERSI retirement. He noted that prior to this change, Rule 131 allowed for retirement in place for an early or service retiree. Rule 131 also applies to a member who works only minimal hours as an elected or appointed official. It allows the member to remain in that position and collect PERSI retirement. He stated that prior to this change, Rule 132 allowed for retirement in place only for a service retiree.

Prior to the change, the rules were not consistent and this caused confusion because under one rule, the member could be an early or service retiree, but under the other rule the member had to be a service retiree. The change reflected in these rules makes both rules applicable to a PERSI member who is eligible to retire and is age 62 or older. The rule change makes for needed consistency in the two rules. It also will provide clarity to employers and members who could be affected by the rule. The rule will also make both rules consistent with the Internal Revenue Code which allows a plan to authorize retirement in place for anyone 62 or over.

Director Drum reported this docket was published as a proposed rule in the July 2014 Administrative Bulletin. PERSI received no questions or comments on these rules. He said negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the Board's exclusive fiduciary responsibility for plan operations.

Senator Schmidt wanted to know how PERSI defined service retirement. **Director Drum** explained service retirement was when an employee reached the Rule of 80 (for public safety officers). (Years of service plus the member's age must equal or exceed 80.) When early retirement occurs, the retirement rate is reduced.

Senator Cameron asked for an explanation of the statement on negotiated rulemaking and why PERSI was different from other agencies. **Director Drum** said he did not have a good answer.

MOTION: **Senator Schmidt** moved to approve **Docket No. 59-0106-1401**. **Senator Cameron** seconded the motion.

Chairman Tippetts followed up on Senator Cameron's question about negotiated rulemaking and said he wanted the Board to take a good look at the reason why negotiated rulemaking was not conducted. He said he was willing to support approval of the docket. **Director Drum** said he would follow up with the Board and respond to questions of Senator Cameron and Chairman Tippetts.

The motion carried by **voice vote**.

DOCKET NO. 59-0201-1401: **Rules for Judges' Retirement Fund.** **Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said that effective July 1, 2014, the management and administration of the Judges' Retirement Fund (JRF) was transferred to the PERSI Board (Board). These new rules govern the administration of the JRF. They include prior rules that had been previously adopted by the Idaho Supreme Court order. Those rules primarily addressed distribution issues and were intended to satisfy Internal Revenue Service (IRS) requirements. **Director Drum** stated the new rules also contain rules directed at PERSI's administration of the JRF in the areas of assumptions, contribution rates, disability and divorce. These rules were provided in draft to representatives of the Idaho Supreme Court prior to their being adopted. This docket was published as proposed in the July 2014 Administrative Bulletin. PERSI received no questions or comments on these rules.

MOTION: **Senator Schmidt** moved to approve **Docket No. 59-0201-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 59-0103-1402: **PERSI Contribution Rules.** **Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said this was a temporary rule. The purpose for this rule is to eliminate scheduled contribution rates. He gave a brief history of the rates. He stated that this year with the market recovery and the strong-funded status of the fund, the Board determined the next two scheduled increases could be eliminated. State agencies and the Division of Financial Management have not included rate increases in agency budgets.

MOTION: **Chairman Tippetts** moved to approve **Docket No. 59-0103-1402**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 59-0103-1403: **PERSI Contribution Rules.** **Don Drum**, Administrative Director, Public Employee Retirement System of Idaho (PERSI), said this was a temporary rule. He said the purpose of the rule was to reduce the excess merger cost portion of the Firefighter Retirement Fund (FRF) employer rate. Actuarial valuation of the FRF indicates it is appropriate to reduce the rate. **Director Drum** stated the excess merger rate has been 17.24 percent since 1997. Over the latter half of 2014, the PERSI Board considered lowering the excess merger cost rate if the funded rate of the FRF reached 110 percent. The Board considered that a funded rate of 110 percent would allow a reduction in the excess cost rate, while at the same time provide a cushion against market volatility. Since the actuarial valuation as of July 1, 2014 showed the FRF was 110.9 percent funded, the PERSI Board at the October 2014 meeting authorized rules to lower the rate from 17.24 percent to 5 percent, effective January 1, 2015.

Senator Ward-Engelking moved to approve **Docket No. 59-0103-1403**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0501-1401:**

Rules Under the Crime Victims Compensation Act. George Gutierrez, Bureau Chief, Industrial Commission (Commission), said this rule is necessary to implement updates under the Crime Victims Compensation (CVC) Medical Fee Schedule and to clarify the calculations of the allowable payment of Current Procedural Terminology (CPT) Codes established by the American Medical Association (AMA); and to provide direction and a consistent method for calculating mileage reimbursement for necessary treatment and services for eligible victims of the program.

Bureau Chief Gutierrez explained that Idaho Code § 72-1026 authorizes the Commission to adopt a fee schedule for the Crime Victims Compensation Program (Program) to use to determine allowable payments to medical providers for treatment and services for injuries sustained by innocent victims of crime. The Program adopted a fee schedule similar to the workers' compensation fee schedule, which is based on the Resource Based Relative Value Scale (RBRVS). The RBRVS is a reimbursement method used by the Centers for Medicare and Medicaid Services (CMS). He explained there are two main components to RBRVS. CMS assigns each coded procedure a numerical Relative Value Unit (RVU) based on the work, practice, and malpractice expenses associated with providing that service. The other factor is a monetary conversion factor determined by the Commission.

The allowed amount is the assigned RVU multiplied by the corresponding conversion factor. The adjustments in the table include a housekeeping change to particular code ranges without other adjustments to the actual conversion factors. The change in the code ranges in Medicine Groups 1 and 2 regroups certain psychiatric diagnostic evaluation codes to align with coding changes implemented by the AMA. These coding changes affect the allowable amount determined by the fee schedule. This allowable amount sets the rates the Program uses to reimburse treatment providers for services delivered to eligible victims of crime. Adoption of the changes in service categories enables the program to set appropriate allowable amounts for a particular treatment or service and to reimburse providers at the appropriate rates as determined by the fee schedule.

In the next section of the rule, the Commission is authorized to reimburse eligible victims or their immediate family members for their expenses for necessary travel incurred in connection with obtaining benefits covered under the Crime Victims Compensation Act (CVCA). Currently, the Commission does not have a provision in either statute or rule that specifies how this benefit is calculated or administered. This pending rule provides a standardized method for the Program to calculate and reimburse victims and their family members for transportation expenses to obtain treatment and services for their crime-related injuries.

Bureau Chief Gutierrez explained that Idaho Code § 72-1019 authorizes the Program to provide payment for reasonable treatment and services for victims who suffer injuries as the direct result of criminally injurious conduct. There is no provision in statute or rule that specifies how long treatment providers have to submit their claims for payment to the Program. On many occasions some treatment providers have waited several years to file their claims for reimbursement. As time passes, many providers move their records to offsite long-term storage or destroy them altogether. This often causes delays or outright prevents providers from submitting the records to the Program for review, leading to the denial of potentially compensable claims because the provider did not submit the required documentation. A two-year filing period from the date-of-service or the date of the application helps to ensure that claims and supporting documentation are submitted in a timely manner. The two-year time period is well within industry standards for submission of claims to both private and public benefit sources (Medicaid and

Medicare filing deadlines are one year). The failure of the provider to meet the filing requirement generally does not result in a financial burden to the patient. When the Program denies a claim, eligible victims have the right to appeal that denial, as outlined in the rules. In general, if the claim was denied due to the provider's negligence and the treatment is for a crime-related injury, the Program would provide compensation on behalf of the victim upon appeal.

Negotiated rulemaking was not conducted because the amendments are necessary to implement the changes in the CPT codes, published by the AMA. The CVC Medical Fee Schedule is not correctly reimbursing providers for some services delivered to eligible victims of crime; the rule amendment would allow the program to appropriately reimburse providers for eligible services.

Chairman Tippets referred to reimbursement for transportation expenses and wanted to know how "local area" was determined. **Bureau Chief Gutierrez** said there was a 15 mile rule, which meant there was no reimbursement for travel within a 15 mile radius. He explained that any travel outside of 15 miles would be compensated. **Chairman Tippets** said the definition was unclear, and he recommended the Commission specifically define "local area".

Senator Schmidt commented on how the fee schedule was similar to the workers' compensation fee schedule and wanted to know if the Commission had discussions about the rule changes with the Workers' Compensation Board. **Bureau Chief Gutierrez** replied "yes."

Senator Cameron wanted to know if the Crime Victims Compensation Fund (Fund) was considered the primary insurance or whether the victim's insurance company would be primary. **Bureau Chief Gutierrez** said the Fund was the last resort with the victim's insurance company being the primary. However, the Fund covers what the insurance company does not.

Senator Cameron remarked there was an opportunity to reduce compensation to victims who were already paid by the insurance company. **Bureau Chief Gutierrez** explained the Commission would obtain a copy of what the insurance company paid, and a payment would be made on the unpaid amount.

Senator Schmidt asked for a clarification as to whether the Fund was used prior to the Catastrophic Fund, which was a last resort. **Senator Cameron** remarked it was kind of the Commission to allow the victim two years to submit insurance paperwork. He was wondering how that would work if the Catastrophic Fund was secondary. **Bureau Chief Gutierrez** said payment would not be held up by the Catastrophic Fund. The Commission pays any bills received and makes up to three requests for documentation. A ledger is provided to the Catastrophic Fund based on what was already paid. If necessary a refund would be issued.

MOTION: **Senator Schmidt** moved to approve **Docket No. 17-0501-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Tippets.

ADJOURNED: There being no further business, **Chairman Tippets** adjourned the meeting at 2:23 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 19, 2015

SUBJECT	DESCRIPTION	PRESENTER
	Honoring of Page Karessa Love	Chairman Tippetts
<u>S 1023</u>	Insurance - Adds to Existing Law to Provide Definitions, Provide for Insurer Conduct and Unfair Trade Practice	John Mackey, United Heritage Life Insurance Company
<u>S 1008</u>	Relating to Real Estate - Language Relating to A Fee	Jeanne Jackson-Heim, Executive Director, ID Real Estate Commission
<u>S 1006</u>	Relating to Idaho Real Estate - Clean up Language	Jeanne Jackson-Heim
<u>S 1007</u>	Relating to Idaho Real Estate - Non-Sufficient Funds	Jeanne Jackson-Heim
<u>S 1009</u>	Relating to Idaho Real Estate - Terms of Course Provider's Certification	Jeanne Jackson-Heim
<u>S 1010</u>	Relating to Idaho Real Estate - Fee Splitting	Jeanne Jackson-Heim
DOCKET NO. <u>09-0130-1401</u>	Unemployment Insurance Benefits Administration Rules	Bob Fick, Communications Manager, Department of Insurance

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Martin

Sen Lakey

Sen Heider

Sen Lee

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 19, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Senator Lee

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. He welcomed all. He went over a chart entitled, "Motions in Committee" and said the chart was discussed at the chairmen's meeting. He highlighted some of the motions requiring a two-thirds vote and commented that this chart is a guideline, but not a rule of the Senate. He said if anyone wanted to discuss the chart, to please see him.

HONORING OF PAGE: **Chairman Tippetts** honored Page Karessa Love. She shared what she has learned while being a Senate Page and said she was excited about politics. She said she was going to Utah State to major in equine science. She hopes after college graduation to be accepted into Clinton Anderson's professional horse training clinician program. **Ms. Love** thanked the Committee for the opportunity of becoming a Senate Page. **Chairman Tippetts** introduced the new page, Samantha Mooney.

S 1023: **Insurance - Adds to Existing Law to Provide Definitions, Provide for Insurer Conduct and Unfair Trade Practice.** **John Mackey**, representing United Heritage Life Insurance Company, said this legislation establishes requirements for life insurance companies related to certain unclaimed life insurance benefits. The bill requires the insurer to conduct a comparison between the policies, annuities, retained asset account, and federal Social Security Administration's (SSA) Death Master File or similar document. It provides guidelines for conducting the comparison. The computer database file has been available since 1980 and contains information for over 89 million deaths. The SSA estimates 95 percent of all current deaths are being reported to the file.

Upon establishing the knowledge of death of a policy holder, who has a benefit due under the policy, the insurer is required to take steps to pay the benefit of a policy, annuity, or retained assets account to the designated beneficiaries. If a match is found and a claim for benefits has not yet been submitted then the insurer is required to initiate, complete and document a good faith effort to determine if benefits are due, locate a rightful beneficiary and begin the claim process within 90 days of the match date. If beneficiaries cannot be found, insurers remit the unclaimed proceeds to the State as required in current law.

Failure of an insurer to meet requirements of the legislation with such frequency as to constitute a general business practice, will be in violation of Idaho Code, Chapter 13, Title 41 (Trade and Practice Frauds). The legislation excludes policies and contracts that typically include a third party of interest. **Mr. Mackey** said the bill also includes a one-year delay of the effective date to provide insurance companies sufficient time to develop necessary procedures to comply with the new law.

The Department of Insurance and State Treasurer's office are aware of this proposed legislation, and have no objections or concerns. Fifteen other states have already enacted similar legislation and nine additional states (including Idaho) are currently considering this legislation.

Chairman Tippetts said he was supportive of the bill, but he had several questions. He and **Mr. Mackey** discussed the available Death Master File databases, accidental death policies, the 90-day notification requirements and what constituted a complete good faith effort. **Chairman Tippetts** wanted to know about using the word "complete." He wondered if the effort of finding a beneficiary was not completed within 90 days, whether the insurance company would be out of compliance. **Mr. Mackey** said not finding a beneficiary within 90 days was immaterial as the legislation requires that a comparison of the entire Death Master File be done the first time within 90 days. **Chairman Tippetts** and **Mr. Mackey** discussed confirming the death of an insured and how there could be more than one person with the same name or variation of, which could delay the confirmation of death. They went on to discuss how a third party could not act as an agent for the beneficiary; there was no charge to another party, and the cost of the good faith effort was borne by the insurance agency. **Mr. Mackey** said some companies could make isolated cases sufficient enough to be a normal business practice. This bill gives the insurance industry legal room. The goal is to pay the claim in a timely manner. **Chairman Tippetts** and **Mr. Mackey** discussed that whenever there is a violation, the insurance company is subject to having their license revoked, suspended, or receiving a fine of \$1,000 and/or six months in county jail.

Senator Heider referred to page 3, lines 20 through 25 and questioned accrued interest on the contract. He also referred to line 24, interest payable under Idaho Code § 41 shall not be payable as unclaimed property. He asked for an explanation and wanted to know if interest was payable to the beneficiary. **Mr. Mackey** explained there were two types of interest, one statutory and one contractual. If the contract calls for interest to accrue, that is payable to the State as income property. If the contract has statutory interest accrued, that will not pass to the State. **Senator Heider** wanted to know if there was any recourse for beneficiaries who want to be paid in a timely manner to impact the process, since they may not know of the existence of all of the policies a decedent may have. **Mr. Mackey** said he was not sure the beneficiary would be helped in any way to know there is a policy until they are notified.

Senator Cameron offered to answer the question. He said there was nothing in the legislation that prohibits a beneficiary from doing their own research and going directly to the insurance company and filing a claim.

Senator Lakey commented that with today's technology, it is fairly simple to run a list through a computer. **Senator Schmidt** asked if there was a requirement that someone have a social security number. **Mr. Mackey** replied it was a question asked on every application for insurance.

MOTION:

Senator Martin moved that **S 1023** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion.

Senator Lakey said he was in support, but cautioned whether or not the information relating to certain unclaimed life insurance benefits should be required in code.

The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

- S 1008:** **Relating to Real Estate - Language Relating to A Fee.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said this legislation eliminates the provision for collection of a \$10 administration fee related to the Commission's statutory errors and omissions program. The Commission charged the fee when licensee applications were processed to purchase and renew group insurance. However, for many years licensees have purchased and renewed their insurance directly from the insurance provider. The Commission stopped collecting the administrative fee from group policy holders many years ago. **Executive Director Jackson-Heim** gave a brief description of the changes.
- MOTION:** **Senator Heider** moved that **S 1008** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.
- S 1006:** **Relating to Idaho Real Estate - Clean up Language.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said this legislation seeks to clean up various provisions in its license law. She went over the changes, including the following: Idaho Code § 54-2004(44) which broadens the definition of "state or jurisdiction" to include foreign states, provinces and emirates by changing the term "foreign country" to "foreign jurisdiction"; Idaho Code §§ 54-2018(7) and 54-2036 to remove obsolete references to "challenge exam," and to change the term "final exam" to "assessment"; Idaho Code § 54-2027(5) to change "working day" to "business day"; Idaho Code § 54-2030 to resolve conflicts with other sections; Idaho Code §§ 54-2032 and 54-2033(2) to add the term "post license" inadvertently omitted in previous legislative enactment; § 54-2039 to make the term "branch manager" consistent with other references and to clarify the duties applicable to branch managers; Idaho Code § 54-2051(4) to clarify that dated signatures are required on all offers to purchase; and to remove an obsolete, confusing and irrelevant Idaho Code § 54-2056(7).
- MOTION:** **Senator Patrick** moved that **S 1006** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Patrick will carry the bill on the floor of the Senate.
- S 1007:** **Relating to Idaho Real Estate - Non-Sufficient Funds.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said the license law authorizes the Commission to deny, expire, suspend or terminate a license on the grounds the license application fee was paid using a Non-Sufficient Fund (NSF) check. This legislation updates the law to add "any other type of insufficient payment" as a ground to expire, suspend or terminate a license.
- MOTION:** **Senator Lakey** moved to send **S 1007** to the floor of the Senate with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.
- S 1009:** **Relating to Idaho Real Estate - Terms of Course Provider's Certification.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said this bill relates to certified instructors and providers. The license law requires any provider or school that offers courses for real estate license credit to be certified by the Commission. Instructors teaching pre-license, post license and the Commission core course must also be certified. She stated the Commission presently has 98 active status certified providers and 57 certified instructors. Certifications are renewed every other year. Many of the certified instructors are also certified providers and real estate licensees. Some of the instructors have three different renewal dates. Real estate licenses are renewed on the birthday month. Keeping track of the other deadlines is a challenge because those dates do not correspond to any date that makes sense. **Executive Director Jackson-Heim** cited examples. She said that after discussing this issue with a number of certified instructors, the outcome was to change the staggered 2-year renewal dates for

provider and instructor certifications to one annual renewal date on June 30. She explained the reason for the annual renewal date is because many of the certified instructors are certified to teach the required core course which is updated every year due to changes in the law.

The certified instructors pay \$25 every 2 years to renew, and the certified providers pay \$50 every 2 years. This law change would result in a very small increase in fees paid. The Commission has not heard any negative feedback.

Senator Lakey wanted to know why the term was changed from two years to one. **Executive Director Jackson-Heim** explained that if someone was licensed before the year was up and the deadline was June 30, the applicant would be charged for two years instead of a few months or a year. **Senator Martin** said he understood the change is easier on the licensee but was wondering about the Commission. **Executive Director Jackson-Heim** explained someone has to do a search and send out letters and doing this once a year will save staff time.

MOTION: **Senator Schmidt** moved to send **S 1009** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor of the Senate.

S 1010: **Relating to Idaho Real Estate - Fee Splitting.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission). Idaho Code § 54-2054 of the license laws prohibits licensees from fee-splitting with unlicensed persons and also prohibits sales associates from accepting an earned sales commission, fee or other compensation from anyone other than their own broker. Idaho Code § 54-2054(2) provides an exemption for payment by the broker to a legal business entity owner exclusively to active Idaho licensees. This amendment seeks to clarify the scope of that exemption to ensure against misuse and accommodate common industry practices. She said currently there is a loophole. **Executive Director Jackson-Heim** said there was a narrow exception in the law, where payments to unlicensed entities are allowed when Limited Liability Corporations or other business entities are formed for tax purposes, or for licensees who form teams with other licensees in their offices. The broker is allowed to pay fees to these unlicensed entities because the fees were earned by the individual licensees as owners of the business entities. She illustrated, with a diagram, the intent of the license law in making commission payments to licensees. The Commission was not able to determine exactly the purpose of this particular business arrangement, but thought this was being done to allow the agent to hide assets from creditors. She outlined the other changes in the bill.

MOTION: **Senator Heider** moved to send **S 1010** to the floor of the Senate with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.

PASSED THE GAVEL: Chairman Tippetts passed the gavel to Vice Chairman Patrick to review the rules.

**DOCKET NO.
09-0130-1401:**

Unemployment Insurance Benefits Administration Rules. Bob Fick, Communications Manager, Department of Insurance (Department), said the rule is being changed to reflect how the Department currently processes unemployment insurance claims. This rule change will delete references to mailed and in person claims because they are no longer used by the Department. Instead, claims are filed over the Internet, or in special circumstances by telephone. Negotiated rulemaking was conducted. **Communications Manager Fick** said this rule eliminates the provision for in person and mailed-in claims. He said the Department has been using the internet more during the last 20 years. The rule does allow for telephone claims at the Department's discretion for the disabled, limited English speaking, illiterate and computer illiterate applicants. He pointed out that anyone who wants to file a claim has an opportunity. The Department will modify the rule next year to modify the language "at the Department's discretion." **Vice Chairman Patrick** wanted to make sure the Department modified the language to include "new claims may also be filed by telephone at the Department's discretion."

Senator Cameron wanted to know how the House voted on this rule. **Communications Manager Fick** said the House committee voted to accept the rule. **Senator Cameron** wanted to know how the Department paid claims. **Communications Manager Fick** said a debit card was issued when a claim was approved or a direct deposit was made into a claimant's bank account. **Senator Cameron** and **Communications Manager Fick** had a conversation about the method of payment. They discussed the idea that some claimants do not have a bank account and that is why a debit card was the other form of payment.

Chairman Tippets expressed a concern the Department changed the practice prior to a rule change. He said he had a discussion with Communications Manager Fick and the Director of the Department. **Communications Manager Fick** explained the change was not an attempt by the Department to change policies without advising the Legislature. He said this was more of a shift with a change in technology. **Chairman Tippets** stated there was a policy change for claimants by the Department that claims will not be accepted unless filed on-line. The Department changed the policy without the approval of the Legislature.

Senator Lakey wanted to know if the Department was taking claims by telephone. **Communications Manager Fick** said claims were being taken over the phone for non-English speaking applicants, the disabled or illiterate.

MOTION:

Senator Martin moved to approve **Docket No. 09-0130-1401**. **Senator Ward-Engelking** seconded the motion.

Senator Lakey stated the Department was not trying to limit applicants from making a claim. Discretion is appropriate in the rule, and it should be stated claimants can use the telephone to avoid potential discrimination. He said for the record, he would be voting against the motion.

The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Patrick passed the gavel to Chairman Tippets.

ADJOURNED:

There being no further business, **Chairman Tippets** adjourned the meeting at 2:38 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 24, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 3, 2015	Vice Chairman Patrick
	Minutes of February 5, 2015	Senator Lee
	Minutes of February 12, 2015	Senator Ward-Engelking
<u>RS23601</u>	Relating to Driving Schools	Chairman Tippets
GUBERNATORIAL APPOINTMENTS	Committee consideration of the Gubernatorial appointment of Jeff Sayer, Director, Department of Commerce	Jeff Sayer
	Committee consideration of the Gubernatorial appointment of Gavin Gee, Director, Department of Finance	Gavin Gee
	Committee consideration of the Gubernatorial appointment of Thomas Baskin, Commissioner, Industrial Commission	Thomas Baskin
<u>S 1080</u>	Relating to Genetic Counseling	Jennifer Eichmeyer, Genetic Counselor
<u>S 1001</u>	Relating to Workplace Safety	Tom Limbaugh, Commissioner, Industrial Commission
<u>S 1047</u>	Relating to State Purchasing Law	Bill Burns, Administrator, Division of Purchasing
<u>S 1046</u>	Relating to Engineers and Land Surveyors	Keith Simila, Executive Director, Professional Engineers and Professional Land Surveyors
<u>S 1063</u>	Relating to Land Surveying	Keith Simila, Executive Director, Professional Engineers and Professional Land Surveyors

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts

Vice Chairman Patrick

Sen Cameron

Sen Martin

Sen Lakey

Sen Heider

Sen Lee

Sen Schmidt

Sen Ward-Engelking

COMMITTEE SECRETARY

Linda Kambeitz

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 24, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Vice Chairman Patrick** moved to approve the Minutes of February 3, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Ward-Engelking** moved to approve the Minutes of February 12, 2015. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

RS 23601: **Relating to Driving Schools.** **Chairman Tippetts** said this legislation requires \$5 of each fee paid for a class D driver's training permit be paid to either the Driver Training Account, if the person is taking driver's training from a public school; or the Bureau of Occupational Licenses (Bureau) for deposit in the State Treasury to the credit of the Occupational Licenses Fund (Fund), if the person is taking driver's training from a private driver's training program. Currently, this \$5 is paid to the Driver Training Account regardless of whether the student is enrolled in driver's training through a public school or through a private driving school. It is estimated that approximately \$25,000 per year would be credited to the Fund rather than to the Driver Training Account.

Chairman Tippetts explained the only way to have the RS printed as a bill would be to ask for unanimous consent to send to a privileged committee.

UNANIMOUS CONSENT REQUEST: **Chairman Tippetts** asked for unanimous consent to send **RS 23601** to the Judiciary and Rules Committee for printing. There were no objections.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Jeffery Sayer of Eagle, Idaho, as Director, Department of Commerce (Department), to serve a term commencing January 5, 2015 and expiring on January 7, 2019.

Director Sayer thanked the Committee for their time, support and consideration. He was given the task by the Governor to lead the State's economy and bring business principles to state government. He wants to make sure the Department is run effectively with good, solid basic principles. He talked about the changes and accomplishments of the Department. He said he was very proud of the team at the Department and excited about the future.

MOTION:

Senator Martin moved to send the gubernatorial appointment of Jeffery Sayer as the Director, Department of Commerce, to the floor with the recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion.

Senator Cameron thanked Mr. Sayer for doing a great job. **Chairman Tippetts** said he also appreciated the great job done by Mr. Sayer.

The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Gavin Gee of Boise, Idaho, as Director, Department of Finance (Department), to serve a term commencing January 5, 2015 and expiring on January 7, 2019.

Director Gee thanked the Committee for their time and consideration. He said he was honored to be reappointed. He was grateful for the improvement in the economy. **Chairman Tippetts** thanked him for his service. **Senator Schmidt** and **Director Gee** had a conversation about the challenge of keeping employees for a long period of time due to competition with the federal government, which pays higher salaries.

MOTION:

Senator Ward-Engelking moved to send the gubernatorial appointment of Gavin Gee as the Director, Department of Finance, to the floor with the recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion.

Senator Cameron disclosed for the record he has a securities license.

Vice Chairman Patrick said he had known Mr. Gee for many years, he was dedicated and he thanked him for his work. **Senator Heider** said he appreciated the work Mr. Gee has done. He said Mr. Gee's Department listens to the people of Idaho. He was impressed with Mr. Gee bringing issues forward and commended him for his integrity.

The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT &
VOTE:**

The appointment of Thomas Baskin of Boise, Idaho, as Commissioner for the Idaho Industrial Commission (Commission), to serve a term commencing January 13, 2015 and expiring January 13, 2021.

Mr. Baskin thanked the Committee for their time and consideration. He talked about the rights of employers and injured workers. He said he was a workers' compensation attorney before becoming commissioner. He said he knows about the law and how it works. He said the Commission is comprised of a representative from labor, industry and the legal field. Their deliberations are always thoughtful. **Mr. Baskin** wanted the Committee to know he was interested in continuing in his position. He pointed out there was a need to look at electronic filing and management for the future. He noted there was a move in the nation to adopt evidence-based medicine, which would make medical care more efficacious.

Senator Cameron and **Mr. Baskin** discussed Mr. Baskin's previous career as an attorney when he represented employers and sureties. **Mr. Baskin** said he has made a serious effort to apply the law to the facts and to be unbiased. They discussed how Mr. Baskin would handle a possible conflict of interest involving a former client. **Mr. Baskin** stated he was not handling a case that involved a former client and has always practiced full disclosure.

Senator Schmidt noted that Mr. Baskin had listed his party affiliation as an

Independent on his application, but that party is not recognized in Idaho. **Mr. Baskin** said he is now a registered Republican.

MOTION:

Senator Schmidt moved to send the gubernatorial appointment of Thomas Baskin as Commissioner for the Idaho Industrial Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1080:

Relating to Genetic Counseling. Heather Hussey, Genetic Counselor with St. Luke's, said this legislation creates a licensing system and licensing requirements for genetic counselors. The legislation provides a short title and definitions and defines the scope of practice for genetic counselors, which includes interpreting family and medical histories to assess risk of disease, educating families about inheritance, genetic testing, disease management and prevention, and ensuring that genetic information is used appropriately in the delivery of medical care. Recognizing that genetic counseling profoundly affects the lives of people of the State of Idaho, it is the purpose of this act to set standards of qualification, education, training and experience, and professional competence for those who engage in the practice of genetic counseling and to protect the public from unprofessional conduct by both unlicensed persons and persons licensed to practice genetic counseling. There will be no fiscal impact on state or local funds.

Ms. Hussey stated there are 12 licensed genetic counselors in Idaho. **Ms. Hussey** said that since presenting this legislation last year, a few changes have been made in response to the recommendations of this Committee. They have met with the Bureau of Occupational Licenses (Bureau) to develop a business plan that will ensure that genetic counselor licensure would not impact state or local funds. The number of board members has been reduced and the fees have been lowered by 50 percent. The penalty language has been modified to be in line with other licensing in the State. There were minor changes that needed to be made, and she asked if the bill could be sent to the Amending Order and to the floor of the Senate.

Senator Lakey and **Ms. Hussey** had a conversation about the genetic counselors in surrounding states who are serving Idahoans and how the licensing requirements being proposed would affect those counselors. **Ms. Hussey** said that anyone wishing to practice genetic counseling in Idaho would have to be licensed. They discussed the formal training requirement of 200 hours and the requirement of the practice of genetic counseling for at least 5 hours per week for at least the 5 years immediately prior to the date of application. **Ms. Hussey** said the requirements came from input from practitioners, since so many of them do counseling on a consistent basis.

TESTIMONY:

Amy Rohyans Stewart, Certified Child Life Specialist, St. Luke's Children's Hospital, representing herself, testified in support of this bill. She talked about her family history of cancer. She said she adopted a Down syndrome child who had many health issues, one of which was hyperparathyroidism. Her meeting with genetic counselors helped her understand "what if" her daughter had cancer and the options for treatment. She said she was impressed with the knowledge of the genetic counselors and their command of the information and data. Because of meeting with the genetic counselors, she and her husband felt armed with solid questions and information to take to their physician for future planning.

Wayne Hoffman, President of the Idaho Freedom Foundation, spoke in opposition of this bill. He said he opposed this bill last year and his reasons have not changed. He stated licensure does not make people more protected. He said licensure increased the cost of medicine. He said this bill would make it

harder for people to make a living. He felt the language in the bill was restrictive and exclusionary.

Dr. Dan Zukerman, Board certified medical oncologist and Executive Medical Director, St. Luke's Mountain States Tumor Institute (MSTI), testified in support of this bill. He said this legislation was overdue. He said genetic counseling is an established and recognized profession in health care delivery. He said he has worked with genetic counselors throughout his tenure in medicine, and they are recognized as valuable members of the health care team. Providing genetic services to individuals and their families is a complex endeavor that involves not only making diagnoses and treatment decisions, but also eliciting a detailed family and medical history, assessing genetic risk and educating families about complicated genetic information. This requires considerable time and he relies upon genetic counselors as valued professional colleagues working with him to complete the myriad of tasks involved in providing quality care.

Dr. Zukerman said the number of physicians specifically trained in genetics is not increasing at a sufficient rate to meet the future demands for genetics expertise. He stated that over the last several years, direct-to-consumer testing has emerged, and several companies now offer genetic testing directly to the public without the involvement of a health care provider. This significantly increases the potential for confusion over the meaning of test results with increased potential harm to the public. He noted, as a physician, he is concerned that individuals are receiving genetic information without understanding the medical and psychosocial implications. His greatest concern is that the public will be at risk for receiving genetic services through unqualified providers. Licensure is central to ensuring access to appropriately trained health professionals and will ensure that patients and families receive quality genetic services in the State of Idaho.

Senator Schmidt said his impression was that all genetic counselors were employed by St. Luke's. He wanted to know how licensure would change the quality of performance. **Dr. Zuckerman** and **Senator Schmidt** had a conversation about the cost of licensure, inappropriate testing and advising, and the cost of health care. They also discussed the performance of genetic counselors. **Dr. Zuckerman** said many doctors say genetic counselors know more about genetics than they do, because the counselors continue to train. He pointed out that sometimes genetic testing costs thousands of dollars and sometimes the tests are not necessary. In addition, an inappropriate diagnosis can result in unnecessary surgery, which would contribute to the cost of health care.

Molly Steckel, representing the Idaho Medical Association (IMA), said she appreciates working with the genetic counselors. She agreed with Dr. Zuckerman about the complexity of cases, and that licensure is needed. She stated the IMA did not have an official position. She has heard from physicians who are in favor of this bill.

Ms. Hussey summarized her previous testimony and thanked all who testified, saying she appreciated the help.

Vice Chairman Patrick wanted to know if the conscience clause should be in the bill. **Ms. Hussey** said the genetic counselors were bound by a code of ethics and could not answer questions about what a person should do. She said most studies have found that when genetic counselors are involved, patients are much more informed and comfortable with whatever decision they make.

Senator Heider referred to the statement of purpose and wanted to know how the public would be protected from unprofessional conduct by both unlicensed persons and persons licensed to practice genetic counseling. He also wanted to know what the penalty was if a genetic counselor practiced without a license. **Ms. Hussey** replied that was one of the reasons why the Bureau is involved since they have a history of handling these kinds of issues.

Chairman Tippetts directed the Committee to the sections in the bill referring to denial of license, disciplinary proceedings and certain prohibited acts.

Senator Lakey and **Ms. Hussey** had a discussion about a genetic counselor answering a patient when asked for advice about making a decision. **Ms. Hussey** said a genetic counselor is trained to redirect the question back to the patient to help them make an informed decision about their care. The genetic counselor tries to find a common ground to support the patient in making a decision.

Senator Cameron wanted to know what amendments needed to be made to this bill. **Ms. Hussey** went over the changes, which included a grammatical change and a clarification of exemptions for physicians.

MOTION:

Senator Ward-Engelking moved to send **S 1080** to the floor of the Senate with a recommendation to refer this bill to the amending order. **Vice Chairman Patrick** seconded the motion.

Senator Heider expressed a concern about the fiscal note. He said that whenever there is a licensing board involved, costs are incurred and the fiscal note does not reflect the true cost of this legislation. **Chairman Tippetts** commented the fiscal impact was to those seeking licensure and the fee would cover the cost of operating the board. He said he thought it was accurate to say there was no fiscal impact to the State.

Senator Schmidt said he has had many discussions about genetic counselors and said he was comfortable with the genetic counselor group. He said he was not sure licensure would necessarily make a good counselor, but he was in support of this bill. **Chairman Tippetts** commented the genetic counselors had consulted with the Bureau.

Senator Cameron stated the fiscal note does not impact the General Fund. He said it would be good to have the fiscal impact note from the Bureau. He suggested the fiscal note could be written more clearly regarding the allocation of funds and the anticipated spending in the future. He said he agreed with Senator Heider.

Chairman Tippetts asked Ms. Hussey and Ms. Eichmeyer if they would be willing to compile the information requested by Senator Cameron. **Ms. Hussey** said hypothetical scenarios were outlined in the business plan. She said genetic counselors could not officially project those figures but would be under the auspices of the Bureau. **Senator Cameron** clarified that the fiscal note requirement would be an estimate. He said from a budgeting standpoint the Joint Finance-Appropriations Committee (JFAC) looks at fiscal notes. He stated the revised fiscal note would be important for the passage of this bill. **Senator Heider** suggested the fiscal note be included in the revision and recommended an amended fiscal note.

The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

S 1001:

Senator Lee moved to approve the Minutes of February 5, 2015. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

Relating to Workplace Safety. **Tom Limbaugh**, Commissioner, Industrial Commission (Commission), said the language was worked on jointly by the Division of Building Safety (DBS) and the Commission over the past year.

He said the Commission's Advisory Committee formed a workplace safety subcommittee to work through these proposed changes. The invited members represented labor, self-insured employers, insurance companies, the State Insurance Fund, the logging industry, the Association of Idaho Cities, the Idaho Association of Highway Districts, the Idaho Retailers Association, the National Federation of Independent Business, the Idaho Association of Commerce and Industry, the Idaho Hospital Association, the Legislative Budget Office, the Division of Financial Management, the DBS and the Commission.

Mr. Limbaugh gave a brief history of the Industrial Accident Board (Board), which was given authority over workplace safety. He noted, however, in 1971, as part of a major recodification of the workers' compensation laws, the Legislature assigned the responsibility over workplace safety to the Industrial Accident Board, renamed the Industrial Commission. He outlined the history of the Occupational Safety and Health Act (OSHA) and said as a result of federal preemption, current Idaho law incorrectly vests the Commission with authority over private workplace safety. State and local government workplaces are excluded from federal coverage under OSHA.

This legislation clarifies the scope of safety inspections and programs, and transfers all related responsibilities to the DBS, the majority of which they now hold. Further, this proposal identifies the continued use of the Commission's Administration Fund to fund DBS inspections of public buildings, public schools and the logging safety training programs and permits the Administrator to issue a stop work order where evidence reveals a logging workplace safety condition that poses an immediate threat of serious bodily harm or loss of life to employees or members of the public. It provides for enforcement of that order by the Attorney General and makes a known violation of such a safety order a misdemeanor.

Mr. Limbaugh said this legislation authorizes the Administrator of the DBS to conduct safety inspections of buildings owned or maintained by other political subdivisions of the State upon receipt of a written request from the governing body of that political subdivision. Inspections would be subject to the availability of DBS resources and an agreement by the political subdivision to pay the DBS's current fees. The findings of these inspections will be reported to the governing body of the political subdivision.

Kelly Pearce, Administrator, DBS, said the duties now performed by the DBS would be in statute. There will be no changes in the pattern and in the number of personnel.

Senator Cameron discussed the language in the statute that vested the responsibility with the Industrial Commission. They talked about the importance of protecting worker safety and the components of workers' compensation. **Mr. Limbaugh** stated Idaho law has never been changed to recognize OSHA. He commented if Idaho had to adopt rules related to safety inspections, the State would still have authority over the private workplace, which is in direct conflict with OSHA. The Commission does not have the authority. The other problem is that workers' compensation is a no fault system, which bars employees from

making a tort claim against a company. He cited several examples.

Due to the lack of time, this bill was rescheduled.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:57 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 26, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 10, 2015	Senator Cameron
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Ken Edmunds, Director, Department of Labor	Ken Edmunds
<u>S 1001</u>	Continuation of Workplace Safety	Tom Limbaugh, Commissioner, Industrial Commission
<u>S 1078</u>	Mortgage Guarantee Insurance	Peter Kolbe, Vice President and Associate General Counsel, Genworth Mortgage Insurance Corporation
<u>S 1047</u>	Relating to State Purchasing Law	Sarah Hilderbrand, State Purchasing Manager
<u>S 1046</u>	Relating to Engineers and Land Surveyors	Keith Simila, Executive Director, Professional Engineers and Professional Land Surveyors
<u>S 1063</u>	Relating to Land Surveying	Michael Kane, Attorney, Board of Professional Engineers and Professional Land Surveyors

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 26, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:31 p.m. and welcomed all.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Ken Edmunds, Twin Falls, Idaho, as Director, Department of Labor (Department), to serve a term commencing January 5, 2015 and expiring on January 7, 2019.

Mr. Edmunds thanked the Committee for their time, support and consideration. He said there have been significant changes and impacts to local areas in the employment arena. He noted the unemployment rate has gone from 8.8 percent to a current rate of 3.7 percent. There is a shortage of people in the middle skills area. A high school diploma will no longer get a person into a career. They must have a certificate or technical training in order to succeed. He said he was pleased to have his job. He talked about his experience in education and business, how he has been able to apply that knowledge to his present job, and how he hoped to make a contribution towards the future.

Senator Lee said she was excited about the education link with the workforce. She discussed with **Mr. Edmunds** how he planned to merge education with needs in the workplace. They discussed work-based learning through apprenticeships and a new delivery model involving industry participation.

Vice Chairman Patrick said he agreed with Mr. Edmunds that there is a huge shortage of skilled workers. **Mr. Edmunds** said the Department did a ten-year job projection and approached the State Board of Education to ask if the curriculum was aligned to coincide with job projections. There was no definitive answer, but he said the Department will continue to approach the State Board of Education on this matter. He added that nursing programs are training for the addition of 550 new positions per year for registered nurses plus replacement positions and are in line with the projections. Currently, there is not a demonstrated link between what students are selecting as majors and where the jobs exist.

Senator Heider and **Mr. Edmunds** discussed the improvement in the unemployment rate. **Mr. Edmunds** said replacement jobs tend to be service-based versus production-based. Those jobs pay substantially less. The State is running into a real problem where replacement jobs are not at the levels that are needed. The shortages are in the higher paying jobs. The gap needs to be bridged.

Senator Schmidt commented that professionals should also be a part of the jobs discussion. **Senator Schmidt** and **Mr. Edmunds** discussed the idea that many jobs are technology driven and the greatest growth potential for students is receiving a certificate of technical training.

**GUBERNATORIAL
APPOINTMENT:**

Senator Heider moved to send the gubernatorial appointment of Ken Edmunds as the Director, Department of Labor, to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor.

S 1001:

Continuation of Relating to Workplace Safety. Tom Limbaugh, Commissioner, Industrial Commission (Commission), after having previously described the legislation to the Committee, resumed his testimony from February 24, 2015.

Commissioner Limbaugh said the Commission has not performed any safety inspections since 1948. In 1949 the Department of Labor (DOL) was established by the Legislature. The Commissioner of the DOL was directed to cooperate with the Industrial Accident Board (Board) in assisting the Board by making inspections of equipment machinery practices or conditions relating to safety, along with recommendations. The Board continued to have authority and power concerning safety procedures. The DOL later became the DOL and Industrial Services. Industrial Services is now part of the Division of Building Safety (DBS). For the past 25 years the DBS and the Commission have had a Memorandum of Understanding (MOU) designating DBS as the inspecting entity. The funding source for these inspections has been the Commission.

Commissioner Limbaugh stated DBS currently inspects state-owned and/or maintained buildings, public schools and political subdivisions upon request and administers the Logging Safety Program (LSP). Idaho Code §§ 67-2312 and 67-2313 grants DBS the authority to inspect state public buildings. Idaho Code § 39-8008 grants DBS the authority to inspect public schools. Therefore, DBS does not need authority from the Commission to inspect state-owned and/or maintained buildings or public schools.

Commissioner Limbaugh went on to say that Idaho Code § 67-2601A(3) requires the DBS Administrator to cooperate with the Commission in its administration of Idaho Code §§ 72-720, 72-721, 72-722 and 72-723. These are code sections that authorize the Commission, after gaining knowledge of an unsafe workplace, to inspect, hold a hearing and issue an order to render the working conditions safe. However, these code sections predate the Occupational Safety and Health Administration (OSHA) which has primacy over all private employment.

S 1001 repeals Idaho Code §§ 72-720 through 72-723. This removes any question of what authority the Commission has over private industry workplace safety. Workplace safety is very important and workers' compensation is more than just paying benefits. However, **Commissioner Limbaugh** said the Commission has never had the role of promoting safety through the training of employers or workers. Prior to the existence of OSHA, the Commission was given the authority over employers who had unsafe workplaces or equipment to correct those situations. Insurance companies have safety advisors to educate their policyholders. Many employers have safety programs in place. The only private profession provided with safety training by statute is the LSP. Even with this program, OSHA has primacy. This legislation authorizes DBS to administer the LSP. The logging industry was instrumental in wanting DBS to have the

authority to issue a safety stop work order of a logging company.

Commissioner Limbaugh said, in summary, this legislation clarifies the safety inspections and programs carried out by DBS. DBS already has statutory authority to inspect state-owned and/or maintained buildings and public schools. This transfers the authority to inspect political subdivisions upon request and the administration of the LSP to DBS. It removes any question of what authority the State has over private industry workplace safety. Further, this proposal identifies the continued use of the Commission Administration Fund to fund the DBS's inspections of state-owned and/or maintained buildings, public schools and the LSP.

Senator Heider said he was concerned about logging safety. **Kelly Pearce**, Administrator, DBS, responded saying the DBS has been performing inspections for approximately 25 years. There is no intent to change procedures. He is responsible for running the safety program. The actual workers' compensation loss ratio has declined since work safety training has occurred with on-site emergency procedures. **Senator Martin** asked who the administrator referred to in the bill is when there is an issue for an immediate work stoppage. **Mr. Pearce** said he is the responsible administrator.

Senator Cameron said he had several questions. He wanted to know if it was fair to say the Commission has had the authority, but never carried out the responsibility. He remarked the statute was being amended as to whose role it is to protect public safety, which has been the DBS for building safety and employee safety has been tied to workers' compensation through the Commission. **Commissioner Limbaugh** replied that the Commission has not done inspections since 1948. **Senator Cameron** stated what was really important is that employees are protected and adequate safety inspections are done to make sure the workers' compensation system is protected. He wanted to know about the flow of money. **Commissioner Limbaugh** said there is an MOU, but it does not address payment. However, since 1989, funds have been moved to DBS through a fund shift. **Commissioner Limbaugh** said there is no statutory reference to the method of payment. He said what this bill does is to put into statute that the Commission shall be responsible for these programs through a fund shift.

Senator Cameron wanted to know if Mr. Pearce saw any additional costs or expense to run the program. **Mr. Pearce** stated the cost was what led to this bill. He said the intention was to change the emphasis from safety inspection to safety inspection and safety training. There is no intent to increase the size of the program.

Senator Lakey asked about the terminology "immediate threat." **Mr. Pearce** said this was a carryover from previous legislation. The industry participated in giving input and wanted the authority granted. The authority rested with DBS to ensure logging operations did not get shut down.

TESTIMONY:

Woody Richards, representing the Associated Loggers Exchange (Exchange), an Idaho domestic insurance company, both owned and operated by the loggers, said he participated in the subcommittee that negotiated the legislation in this bill. The authorized inspections by the Commission are funded by the workers' compensation premium tax. The concern of insurers and employers was not to create a larger bureaucracy or extend to areas that previously have not been a matter of concern for the Commission. One of the issues discussed was whether inspections should be extended to political subdivisions. The Exchange was in opposition to extending inspections unless the political subdivisions were specifically charged for whatever cost might be incurred. He reported the Exchange supports the current legislation because it minimizes cost and reduces injuries.

Senator Cameron wanted to know if passage of this legislation would require more inspections of facilities that currently are not being inspected. **Mr. Pearce** stated there was a provision where a safety inspection could be requested from DBS at the hourly rate of \$65. He has never had a city or county or a political subdivision request an inspection.

Senator Martin asked Jerry Deckard, who represented the Associated Logging Contractors (ALC), to define the phrase "logging operations in Idaho." **Mr. Deckard** replied that a logging operation in Idaho would start with marking of the timber sale, cruising of timber sale, sawyers and woods on the timber sale, the decking of logs that have been sawn and forwarded and the loading and hauling of logs to a facility that makes boards out of timber. **Senator Martin** then wanted to know if once a log went to a mill, was that a part of a logging operation or the milling operation. **Mr. Deckard** said the logging operation stops at the gate of the mill. **Senator Schmidt** wanted to know if cutting shake bolts for splitting cedar shingles was a part of the logging operation. **Mr. Deckard** said that was part of the milling operation, but firewood was part of the logging operation. He said he has been working with the DBS and Commission representing the logging interests for the last one-and-a-half years to ensure there are safety program operations in place. He said the ALC endorses the bill.

MOTION:

Senator Martin moved to send **S 1001** to the floor of the Senate with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Vice Chairman Patrick will carry this bill on the floor.

**MINUTES
APPROVAL:**

Senator Cameron moved to approve the Minutes of February 10, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

S 1078:

Relating to Mortgage Guarantee Insurance. **Peter Kolbe**, Vice President and Associate General Counsel, Genworth Mortgage Insurance Corporation, said the proposed legislation repeals Idaho Code § 41-2653(1), which requires that a mortgage guaranty insurer retain no more than 25 percent coverage of the borrower's indebtedness to the insured lender. The 25 percent coverage limitation contained in Idaho Code § 41-2653(1) never achieved its intended purpose to spread risk and draw new capital to the industry. The section is out-of-date. There is no fiscal impact.

Mr. Kolbe said mortgage guaranty insurance insures a lender against loan default by a borrower. Typically, a lender requests mortgage guaranty insurance coverage on 25 percent of the home loan balance. For example, on a \$100,000 home loan the mortgage guaranty insurer will pay the lender the first \$25,000 of loss in the event of a loan default. However, it is also very common for lenders to request 30 percent or 35 percent insurance coverage on individual loans, or 100 percent coverage on pools of loans.

Mr. Kolbe stated Idaho's current law forces a mortgage guaranty insurer to reinsure any risks above 25 percent coverage. There is a separate reinsurer for each 25 percent slice of the coverage. In order to write 100 percent coverage, Idaho's law requires that four insurers each hold 25 percent of the coverage. All this reinsurance is placed with reinsurers affiliated with the primary mortgage guaranty insurer. In Genworth's case, for example, there is one primary insurer that writes 100 percent coverage, then reinsures three blocks of 25 percent coverage with three of its sister reinsurers. All four companies are under the same holding company ownership.

Mr. Kolbe gave a brief history of the legislation and said when the Idaho requirement was enacted, it was assumed that it would result in shifting a portion of the insured risk of borrower loan default to unaffiliated non-mortgage guaranty reinsurers. The act of reinsuring risk to third party, non-mortgage guaranty reinsurers would, in effect, bring additional capital into the mortgage guaranty insurance industry. In addition, risk would be further distributed to reinsurers that were not exclusively focused on real estate-related risks. These hoped-for results never materialized because the market for first-dollar-loss reinsurance of mortgage guaranty insurance risk was, and is, thin to non-existent. Consequently, mortgage guaranty insurers formed affiliated reinsurers under their respective holding company systems in order to write risk in excess of 25 percent coverage. As a result, reinsurance exists in form but lacks the real substance of risk spreading and diversification. Instead, capital and other corporate resources are spread among related entities without contributing either new capital or independent risk assessment. Moreover, this mandatory reinsurance requirement creates no additional claims paying resources which means the capital required to support a given amount of risk is the same whether all risk and capital is contained in one entity or split amongst four entities.

In addition to the absence of any discernible benefit, **Mr. Kolbe** reported the mandatory reinsurance requirement creates significant costs for the companies as they are forced to establish, license and maintain multiple separate legal entities. Separate books and records, periodic reports, and licenses must also be maintained, and other legal and regulatory requirements must be met. Statutory accounting statements, audited financials, and outside actuarial opinions must be prepared for each separate entity. In light of the fact that all of the risk remains within the same holding company structure, these additional costs and administrative burdens are difficult to justify.

Finally, the United States mortgage Insurers (USMI) would like to share with the Committee the status of the efforts to repeal this same law in other states. The mandatory reinsurance provision, originally developed in the National Association of Insurance Commissioners' (NAIC) Mortgage Guaranty Insurance Model Act (Model Act) was only adopted in nine states. Arizona, California, Kansas, Oregon, and Texas have recently done away with the Model Act, and USMI is seeking repeal in Idaho, Ohio, New Jersey and New York. **Mr. Kolbe** noted the NAIC Mortgage Guaranty Insurance Working Group (Working Group) is in the process of rewriting the Model Act, and the Working Group members have explicitly discussed this mandatory reinsurance provision and affirmatively removed it from the latest version of the draft revised Model Act.

Vice Chairman Patrick and **Mr. Kolbe** had a discussion about raising the limit in coverage from 25 percent, which makes more money available to homeowners. A lender who needs more capital relief will also benefit, while certain other lenders may retain the loans and not sell them, allowing a freer flow. **Mr. Kolbe** cited several examples. **Senator Schmidt** commented he appreciated the explanation. He wanted to know why the insurer was being removed (by the crossed out lines), which would allow the company to opt out of not paying. **Mr. Kolbe** said the crossed out lines could be left in.

Tom Donovan, Acting Director of the Department of Insurance (Department), said there has been no opposition to this bill.

Senator Cameron asked what was at risk. **Director Donovan** said the Department does not disagree with the bill. He referred to line 21 of the bill where "the insurer shall not at any time have outstanding aggregate risk liability, net of applicable reinsurance, under mortgage guaranty insurance in the amount in excess of 25 times its policyholders' surplus" and then to line 24, "the director may waive the requirement of this section upon written request of the insurer" and said the Department has done this within the last five years.

MOTION:

Vice Chairman Patrick moved to send **S 1078** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Vice Chairman Patrick will carry the bill on the floor of the Senate.

S 1047:

Relating to State Purchasing Law. **Sarah Hilderbrand**, State Purchasing Manager, Division of Purchasing (Division), reported for Bill Burns, Administrator, Division, and said the proposed legislation alphabetizes definitions in the purchasing statute. The proposal is in response to agency input received from the Office of Performance Evaluations (OPE) report, "Strengthening Contract Management in Idaho" and during negotiated rulemaking. In 2013, HCR 18 was passed to state the Division would develop a plan to respond to the OPE report with components of that plan identified. In 2014, the Division issued the response plan to the Joint Legislative Operations Committee.

As a response to the recommendations of the OPE report and input from users, there was a recommendation that the Division work with the office of the Attorney General to review sections of the Idaho Administrative Code related to the procurement process.

MOTION:

Senator Schmidt moved to send **S 1047** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

Senator Cameron commented he has struggled with the alphabetizing of definitions in this bill but supports the need to revamp the state purchasing rules and contracting system.

The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

Chairman Tippets changed the sequence of bills on the agenda in order to accommodate those wishing to testify for **S 1063**. He moved **S 1046** to the end of the agenda.

S 1063:

Relating to Land Surveying. **Keith Simila**, Executive Director, Board of Professional Engineers and Land Surveyors (Board), explained that Michael Kane, Attorney, representing the Board, was unable to be at the meeting to testify. He said this amendment changes the definition of land surveying in Idaho Code to better align with actual practice, improves consistency with surrounding states, and reduces barriers for young professionals to enter the land surveying profession.

He said the current definition describes land surveying as including only boundary surveying and certifying elevations for flood insurance purposes. The Board has worked with the Idaho Society of Professional Land Surveyors and other stakeholders to update the definition in law. He cited the following:

1. Land surveyors are called upon by Idaho statute to safeguard the life, health, and property of the general public. Under the current law, land surveyors are only licensed to work on property boundaries, yet are asked by their clients to sign and seal work that they perform which is not authorized by code. The updated law will include all the services land surveyors routinely provide to their clients and the public.
2. The current law is a barrier to entry for new professionals. Very few young surveyors are entering the workforce and becoming licensed professional land surveyors since they can only credit boundary surveying experience toward the four-year experience requirement. The current law has the effect of extending the experience requirement timeframe for licensure for most survey interns from the minimum four years to eight or more years as boundary surveying comprises only about of one third of the work for most survey businesses.
3. The states surrounding Idaho have recognized the need to protect their public by revising the definition of land surveying to better reflect what surveyors are called upon to do in their states and to recognize the experience and judgment of a licensed professional land surveyor. The new definition will enhance mobility of licensure with other states.
4. Land surveyors must pass two examinations to become licensed. These are national examinations that test for technical competence. The professional land surveyor examination contains questions that are included in the updated definition of land surveying. Test questions relating to the current definition of land surveying in Idaho (boundary surveying) are only 38 percent of the total test. Land surveyors must be competent in the full suite of land surveying services included in the new law in order to pass the professional examination.

Senator Martin asked for an explanation of "the space above, on or below the earth," as outlined on page 2 of the bill. **Director Simila** explained the wording was taken from model law, and this was surveying associated with mining. He gave an example of a rooftop with an elevation component, which would have to be surveyed.

TESTIMONY:

Glenn Bennett, representing Idaho Professional Engineers and Land Surveyors (IPELS), and a member of the Board, stated an abrogation has to be prepared for certain structures around airports because buildings of certain heights cannot be built. That is when surveying has to be done for "the space above the earth."

Bill Farnsworth, Geographic Information Officer, Department of Administration, representing the Geographic Information System (GIS) community, testified in favor of this bill. He explained that GIS is the computer side of mapping. The bill defines surveyor job descriptions. The GIS and surveying communities have been brought together by this process and this cooperative effort. The passage of this bill will alleviate confusion.

MOTION:

Senator Martin moved to send **S 1063** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

S 1046:

Relating to Engineers and Land Surveyors. Keith Simila, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said this legislation has the support of the Idaho Society of Professional Land Surveyors, the American Council of Engineering Companies, and the Idaho Society of Professional Engineers. The bill addresses Board composition, the completion of minimum requirements as a condition of license renewal, improved incentives to renew licenses on time, and a fine in lieu of discipline provision.

Director Simila said Idaho Code currently requires the Board to be comprised of four engineers and one land surveyor. In times past, one member has had both an engineering and land surveying license. The Board has the benefit of two licensed land surveyors and uses both to refer complex land survey related issues to them. The Board sees great value in retaining two surveyors as members in perpetuity, as having two opinions on the same issue provides for better insight into the questions and concerns related to the land surveying profession. Due to age demographics (average age of dual licensed candidates is 68 years), the number of future candidates with dual licenses has greatly diminished. As a result, the Board desires to codify a minimum of two land surveyors for Board membership. There is also a desire on the part of the Board to have an odd number of Board members so tie votes don't occur. In addition, there are some disciplines of engineering and geographic areas that are not well represented on the Board. For these reasons, the Board also seeks to add one more engineer to the Board.

Director Simila pointed out there is one provision of Idaho Code that states once a licensee pays the renewal fee, the license is renewed. Other sections of Idaho Code and Rules authorize the Board to refuse to renew a license for disciplinary reasons or lack of compliance with Continuing Professional Development (CPD). The law change fixes this inconsistency by making it clear that license renewal is conditional upon completing requirements of the laws and rules of the Board. More than 10 percent of licensees renew late. When this happens, late notices are sent out and licensees are reviewed or audited for compliance with CPD. In many cases, the audits produce disciplinary actions that require staff and attorney time and money. These costs are not currently borne by those who renew late but by all licensees. The change proposes an increase in the late fees to provide improved incentive to renew on time. The Board recently implemented an online renewal feature through Access Idaho. Renewing a license on time is made easier by this feature.

A new provision is added that gives licensees an option to pay a fine in lieu of discipline for first time violations of CPD. CPD has been a requirement of

law since 2006. There are some who still are unaware and find themselves in violation. **Director Simila** said this provision gives first time violators an option to avoid discipline, which many prefer. It is modeled after a provision of law used by the Veterinary Board for the same purpose.

MOTION:

Senator Lee moved to send **S 1046** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:46 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 03, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 17, 2015	Vice Chairman Patrick
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Joy Fisher, PERSI Board	Joy Fisher
<u>S 1075</u>	Relating to Correctional Industries	Senator Hill
<u>S 1077</u>	Relating to Death Certificates	Senator Schmidt
<u>S 1062</u>	Relating to Direct Primary Care	Representative Luker and Senator Thayn

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 03, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Chairman Tippetts

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Cameron** moved to approve the Minutes of February 17, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Joy Fisher of Moscow, Idaho, to the Public Employee Retirement System of Idaho (PERSI), term commencing July 1, 2014 and expiring on July 1, 2019.

Ms. Fisher thanked the Commerce and Human Resources Committee (Committee) for their support and consideration. Currently she is the Director of Finance, University of Idaho Foundation. She said she appreciates PERSI and takes her responsibility as a PERSI Board (Board) member very seriously.

Senator Schmidt thanked her for her service and said he was glad she was being considered for reappointment. He asked her to address the statutory requirements for her appointment to the Board. **Ms. Fisher** said there were 2 requirements, namely, she has been with the University of Idaho for 30 years and a member of PERSI for the same amount of time.

GUBERNATORIAL APPOINTMENT: **Senator Schmidt** moved to send the gubernatorial appointment of Joy Fisher to the PERSI Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the appointment on the floor.

S 1075: **Relating to Correctional Industries.** **Senator Hill** said this legislation clarifies that Idaho inmates working for private agricultural employers under contract with Idaho Correctional Industries are not entitled to workers' compensation or unemployment compensation. This has been the understanding and practice under such contracts, and this change is intended to remove ambiguity in the current statute. Because this legislation clarifies the practice and intention of Idaho Correctional Industries, there is no significant fiscal impact to the State.

Senator Hill said that each prisoner who is engaged in productive work may receive compensation for his work as the Department of Corrections Board (Board) shall determine, to be paid out of any funds available in the Correctional Industries Betterment Account. Such compensation, if any, shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance. Compensation shall be credited to the account of the prisoner and paid from the Correctional Industries

Betterment Account.

Nothing in this section or in this act is intended to restore, in whole or in part, the civil rights of any inmate. No inmate who is compensated under this act shall be considered to be an employee of or employed by the State, the Board, or any private agricultural employer that is a party to a contract for inmate labor pursuant to Idaho Code § 20-413A. No inmate engaged in productive work as authorized by this chapter shall be entitled to workers' compensation under Idaho Code Chapter 4 or Chapter 13, Title 72, whether on behalf of himself or any other person.

MOTION: **Senator Lakey** moved to send **S 1075** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

TESTIMONY: **Marty Durand**, representing the Idaho Building Trades Council (Council), spoke in opposition to the bill. She said the agricultural employer has no incentive to make the workplace safe or pay competitive wages. She said she objected to hiring inmates for low wages, which subsidizes the agricultural industry. **Vice Chairman Martin** and **Ms. Durand** had a conversation about the idea that an employer who covers an employee under workers' compensation cannot be sued.

Senator Cameron and **Ms. Durand** talked about the position of the Council relating to the training of employees and inmates. **Ms. Durand** said there are programs in prison to teach trades to inmates.

Andrea Sprengel, Services Manager for the Idaho Correctional Industries, spoke in favor of the bill. She said inmates are provided an opportunity to learn a trade. Inmates who participate in the agricultural work program or who learn a trade are less likely to re-offend. She said the agricultural work program is important to Correctional Industries and benefits the community in many ways. This program provides opportunities for inmates to learn marketable work skills, and make money that can be used to pay child support, pay restitution, and save money. This program provides private agricultural employers with a steady workforce when they have struggled to attract and retain non-inmate workers. The program also sends funds to the Department of Corrections to lower the cost of incarceration expenses, and contributes to the self-sustainability of Correctional Industries.

Ms. Sprengel reported a collaborative effort was made by the Industrial Commission, Idaho Correctional Industries, one of the potential private agricultural employers, and Senator Hill to put forth this bill to amend Idaho Code § 20-412 to provide clarification on how these provisions apply to the private agricultural employer in this recently created program. She said this bill does not change any policies but simply clarifies that inmates are not to be considered employees of the private agricultural employer when participating in this program.

Ms. Sprengel went on to say that the private agricultural employers have a civilian workforce along with inmate workers. The civilian workforce must still have workers' compensation coverage, which would motivate the private agricultural employer to have safety features in place. If injuries were to occur from the private agricultural employer's negligence, a claim would be made against their comprehensive general liability policy.

Correctional Industries must annually request a wage determination for wages that are similar in nature to the work that the inmates will be performing. Private

agricultural employers are required to pay the prevailing wage plus any other costs the employer avoids by using inmate workers, in an effort to make sure that no one is receiving a discount by using inmate labor. Private agricultural employers must certify in the contract they have been unable to attract and retain a sufficient number of non-inmate workers.

Ms. Sprengel said that to participate in the program, work must be done that is related to the processing of perishable food items and cannot include construction or logging.

Ms. Sprengel said there has been no objection to the bill.

Senator Schmidt and **Ms. Sprengel** discussed non-inmate workers being covered by workers' compensation and the approximate range of the cost for that coverage of \$4.50 to \$5.60 per \$100 of payroll.

The motion carried by **voice vote**. Senator Hill will carry the bill on the floor of the Senate.

S 1077:

Relating to Death Certificates. **Senator Schmidt** said the Association of Funeral Home Directors would like help. He said that currently in Idaho, if someone dies without directions for disposal of remains or with uncovered provisions in a prearranged funeral plan, Idaho Code § 39-270(b) does not acknowledge this person as having a "direct and tangible interest" for obtaining a death certificate. This amendment clarifies that the person with authority to designate disposition of remains should be considered a person with a "direct and tangible interest" and entitled to receive an official death certificate.

TESTIMONY:

Ken Mallea, representing the Association of Funeral Directors of Idaho, testified in support of this bill. He said Idaho Code § 54-1142 directs who has priority to make funeral arrangements and who has the right to receive a death certificate is not equal with who has authority in code. This bill allows persons who have authority to have the right to receive a death certificate from the Bureau of Vital Statistics. **Senator Cameron** and **Mr. Mallea** talked about when someone who dies who does not have a prearranged funeral plan. This bill corrects who is entitled to a death certificate.

John Buck, funeral director in Emmett, spoke in support of this bill. He said a clarification would help and he gave an example of a man whose common law wife passed away and due to the current law, he was not entitled to a death certificate.

MOTION:

Senator Cameron moved to send **S 1077** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor.

S 1062:

Relating to Direct Primary Care. **Senator Thayn** said this bill creates a simple format for Direct Medical Care agreements as a method for providing cost effective and personalized routine health care services on a contract, non-insurance basis. The bill provides basic definitions and contract requirements, describes applicable scope of practice, and exempts such agreements from regulation by the Department of Insurance (DOI). Services provided under such agreements can be recognized as "Direct Primary Care" under Section § 1301(3) of the Patient Protection and Affordable Care Act (PPACA) and constitute an allowable component of a qualified health care plan under the PPACA.

Senator Thayn said it is the policy of the State to promote personal responsibility for health care and the cost-effective delivery of medical services

by encouraging innovative use of direct patient-provider practices for primary and specialty medical care. Direct patient-provider practices utilize a model of periodic fees for provider access and medical management over time, rather than simply a fee for visit or procedure service model. Some patients and medical providers may wish to establish direct relationships with one another as an alternative to traditional fee-for-service care financed through health insurance. The purpose of this act is to confirm that direct patient-provider arrangements that satisfy the provisions of this chapter do not constitute insurance. He summarized the definitions and outlined direct care provisions. **Senator Thayn** said a medical provider cannot bill an insurer for the services provided under a direct care agreement; however, a patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This limitation does not prohibit a direct medical care provider from billing insurance for services not provided under a direct care agreement. He pointed out that direct care agreements are not subject to regulation as insurance under Idaho Code, Title 41.

Senator Thayn said a direct care agreement must have the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the services described herein. It is recommended that insurance be obtained to cover medical services not provided for under this direct care agreement." He said a direct care agreement may not be sold or transferred by either party without the written consent of the other party to the agreement. A direct care agreement may not be sold to a group, employer or group of subscribers because it is an individual agreement between a medical provider and a patient. These limitations do not prohibit the presentation of marketing materials to groups of potential patients or their representatives.

Senator Thayn said direct primary care does work. The savings were approximately \$679 per person per year. He said direct primary care would encourage insurance companies to offer a wrap-around policy.

Senator Cameron said he had several questions. He disclosed for the record, under Rule 39 of the Senate, that he is an insurance agent and said he has a perspective that would be unique to some. **Senator Cameron** and **Senator Thayn** had a conversation about the issues being addressed in the bill.

Senator Thayn said the underlying issue was increasing the patient to doctor relationship in order to achieve a better primary care system. What this bill specifically addresses is regulatory uncertainty, even though the DOI has said they do not view direct primary care arrangements as insurance. They also talked about protection for the consumer if the contract was invalidated and protection for those who decide to enter into an agreement with the provider.

Senators Cameron and **Thayn** decided to discuss this question with the doctors who were going to testify later on in the meeting.

Senator Cameron asked Senator Thayn to explain how a direct primary care contract would improve access and reduce costs. He wanted to know what providers in other states are charging in a direct primary care arrangement.

Senator Thayn said that typically charges are \$60 to \$100, with less being charged for children. Direct primary care is designed to provide care for those who do not have insurance or for those who have chronic conditions and would benefit from increased enhancement of primary care. He gave an example of an enhanced primary care pilot program when chronically ill adults who ended up in emergency rooms who needed case management were studied.

The cost of the fee for service model for primary care is approximately 40 cents for every dollar in primary care spending, which are insurance company

costs. If a monthly fee is paid and insurance is not billed, the paperwork cost is reduced and the savings can be invested in a different way. Doctors can increase their income. Costs are reduced for patients who have an enhanced direct primary care relationship with their doctor.

Senator Lakey said in comparing last year's proposed bill there was a focus on routine health care services which is not part of this proposed bill and wanted to know why there was a change. **Representative Luker** said that in keeping with a free market model, options were not limited to certain categories. He stated there were certain practices, such as some sort of specialty, where this may not apply. He said options should be left open for physicians and the services provided in this model.

Senator Martin wanted to know if there were any Idaho physicians who are performing this type of service now. **Representative Luker** said there are approximately seven to ten physicians and the ranks are growing. **Senator Martin** wanted to know if there were other states that have done this, how long ago, what the effect is as far as numbers and the available cost of service. **Representative Luker** said the State of Washington was a good example where the insurance industry has responded to create wrap-around policies for needed coverage. **Senator Schmidt** wanted to know why there was a market response to a change in the State of Washington where the insurance companies decided to offer products that they previously were not offering. **Representative Luker** said he thought the insurance companies saw an opportunity to provide a product and they responded. The purpose of this bill is to plant the seed and to provide opportunities for Idaho citizens. There are a number of entities between the patient and the provider. **Senator Schmidt** wanted to know how broad the definition was of medical provider. He gave examples of a hospital, multi-specialty clinic and a statewide health care network and wanted to know if they were considered medical providers in this bill. **Representative Luker** answered the definition was intended for anyone who was licensed or otherwise authorized to provide health care services.

TESTIMONY:

Ken McClure, attorney, Idaho Medical Association, testified in support of the bill. He said many physicians and patients have become frustrated with red tape in the health care system. This bill allows physicians and patients to enter into agreements in the free market to do something that is different. He said this legislation takes the insurance company out of the equation. The DOI stated that these kinds of agreements were not viewed as insurance. This bill gives more certainty to physicians and patients. Doctors have to meet the requirements of the insurance companies which is frustrating. In order for a physician to practice medicine with the current reimbursement model, the physician has to fit the care of the patient into a Current Procedural Terminology (CPT) code. The doctor must have sufficient documentation to justify the code and be able to defend the code to the insurance company.

Senator Cameron asked conceptually how a direct primary care agreement would work. He gave an example of a patient who went to a primary care physician, agreed to pay a monthly amount, and wanted to know what services the patient would receive for the monthly fee. **Mr. McClure** said the physician can offer a contract to a patient and the patient can agree to that contract. The services the patient will receive will be provided by the physician under the contract for a fee that the two parties agreed upon. The scope of services must be provided by the doctor to the patient. **Senator Cameron** asked how a provider who has agreements with other customers might be impacted with respect to price. **Mr. McClure** said this was a free market choice between the doctor and the patient. **Senator Cameron** wanted to know how the passage

of this bill affected multiple contracts with insurance companies, hospitals, and networks. **Mr. McClure** said most physicians who want to offer these kinds of agreement to their patients will transition their practice rather than use insurance. There is no reason why part of the practice could not be done one way and part another. By unlinking the practice of medicine from insurance, physicians will benefit. He gave an example of how he charges his clients, such as an agreed upon fee which can be paid monthly, quarterly or annually. Sometimes he works on an hourly basis. A direct primary care agreement works the same way.

Senator Cameron wanted to know if someone who signed a contract with a direct primary care physician would they receive preferential treatment over someone else who has either traditional insurance or has no insurance. **Mr. McClure** said that was not the model seen very often. If the contract specifies the terms under which care will be given, the physician owes the patient the service that he has contracted to provide.

Senator Ward-Engelking asked if the term "medical provider" would include hospitals and special day clinics. **Mr. McClure** said yes. **Senator Ward-Engelking** wondered how each patient would negotiate their contract and if they would pay more or less. **Mr. McClure** said there was nothing in this legislation that either requires or prevents physicians and patients from making an agreement. Hospitals are included in the definition of medical provider. **Senator Ward-Engelking** and **Mr. McClure** had a conversation about the possibility of a hospital and clinic becoming a monopoly and how trade cannot be restricted due to anti-trust laws.

Senator Lakey and **Mr. McClure** discussed how scope does not matter and that a contract could be signed between a patient and a cardiologist, for example. **Senator Lakey** said that in this case, if there was a contract, the contract says it can be cancelled by the provider in accordance with the terms. Theoretically, someone could be in the middle of extensive treatment and the provider could use the termination clause when the patient is not finished with treatment and would have to go elsewhere. **Mr. McClure** said the statute says that a patient can terminate the contract at any time for no cause upon 30 days notice. A provider can only terminate for terms that are set forth in the agreement. The patient can also purchase regular insurance.

TESTIMONY:

Dr. Julie Kay Gunther, M.D., Spark Medical Doctors, said she was the owner of a true primary care practice and testified in support of this bill. She said primary care is a simple model of healthcare. She charges all of her patients the same rate. For those who are over 21, the rate is \$60 for anyone over the age of 100 the rate is \$1 a month; and for those under the age of 21 the rate is \$10 a month. Many items are either free or included in the rate. Laboratory tests are sold back to the patient at cost plus 10 percent, which saves patients over 80 percent. Her patients range from insured to uninsured and immigrants. This is an important solution for those physicians who practice direct primary care, which allows them to have a free market agreement with their patients to innovate. Several states have already passed this legislation and several others are considering passage of this kind of legislation. There were 800 doctors doing primary care in 2010 and now there are 4,400.

Senator Schmidt wanted to know if this bill did not pass, how would her practice change. **Dr. Gunther** said her practice would not change, but there is a lot of fear among physicians that the State will try to regulate their practice.

Senator Lakey and **Dr. Gunther** talked about how important it was to obtain wrap around insurance for unplanned events and catastrophes.

Senator Cameron and **Dr. Gunther** had a conversation about the direct medical care program and CPT codes for those patients who have wrap around coverage. **Dr. Gunther** said she did not bill insurance and does not provide anything for which insurance can be billed. **Senator Cameron** said the bill calls for the individual to be able to seek reimbursement, so how does the patient get reimbursed when there is no CPT code. **Dr. Gunther** said some physicians do provide CPT codes. She provides an invoice, which shows the monthly fee, but flex spending and health savings accounts will not reimburse.

Dr. Brian Crownover, independent physician, said he helps take care of Medicaid and Medicare patients, but also does direct primary care. Ideally he would go to all direct primary care. He talked about when a doctor may terminate the patient for costly unplanned events. He said termination does not apply, because the contracts for primary care doctors cover all of the things that could happen within the office. Anything outside of the office, the patient is responsible. He said obtaining health insurance as a wrap-around for expensive items is very important.

Dr. Crownover said without this bill, it will be less attractive for an insurer to come in and pay \$225,000 to the DOI for a single application to get a wrap-around policy approved in the State. He said the physicians want a stable environment in order to bring in wrap-arounds. He spoke about the importance of having insurance, which is needed for catastrophic, rare events, and he compared this to having car insurance. He said insurance should be reserved for big ticket items. He described buying a monthly retainer with a cell phone company, depending on the usage, the same amount is paid every month for access. **Dr. Crownover** then compared a cell phone contract to a primary care contract. He said primary care usage was not engaging in insurance. He said they were not doing a risk pool for payment but doing one-on-one contracts with individuals.

Senator Schmidt and **Dr. Crownover** discussed wrap-arounds coming to the State and how this legislation may help primary care doctors, larger groups or specialists and hospitals. They talked about growing the base which would bring the insurance product to Idaho. **Dr. Crownover** said direct primary care is most visible in the primary care setting and having the legal protection is very helpful. The rare, large dollar events are perfect for insurance, and that is not where the direct primary care model is coming from.

Due to lack of time, this bill was rescheduled.

ADJOURNED:

There being no further business, **Vice Chairman Patrick** adjourned the meeting at 3:00 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 05, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 19, 2015	Senator Schmidt
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Candace Sweigart, Your Health Idaho Board	Candace Sweigart
<u>S 1076</u>	Relating to a Benefit Corporation Act	Senator Winder
<u>S 1062</u>	Continuation of Direct Primary Care	Representative Luker Senator Thayn

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 05, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Schmidt** moved to approve the Minutes of February 19, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: The appointment of Candace Sweigart of Boise, Idaho to the Idaho Health Insurance Exchange Board (Board), term commencing February 5, 2015 and expiring on April 10, 2017. Ms. Sweigart was unable to attend. This appointment was continued to a future meeting.

S 1076: **Relating to a Benefit Corporation Act.** **Senator Winder** said a benefit corporation is a new class of corporation that voluntarily meets higher standards of corporate purpose, accountability and transparency. Twenty-six states and the District of Columbia legally recognize benefit corporation status. Benefit corporation status does not affect a company's tax status, and a company does not have to receive certification to hold benefit corporation status.

He said the purpose of this legislation is to create the addition of a new chapter and title of Idaho Code to establish incorporation requirements for benefit corporations, to define benefit corporations, and to outline the process to adopt and terminate benefit corporation status. Standards of conduct and rules are outlined for directors, benefit directors, officers and benefit officers. This legislation also outlines the means to bring an action on behalf of a benefit corporation, requires an annual report of benefit corporations and makes that report available to certain persons and the public. There will be no fiscal impact to either the General Fund or to county and local governments.

Vice Chairman Patrick wanted to know if there was a limit on the number of shareholders and if there were any restrictions. **Senator Winder** assured him there were no restrictions.

TESTIMONY:

Lisa Fisher, Founder and President of Darshan Partners, testified in support of this bill. She said she believes business is the greatest source of solutions for the issues society faces today and that the free market can address many problems quickly and efficiently without having to resort to government handouts. She said that through her company's work with entrepreneurs across the country she has found that in many states, including Idaho, the free market is sometimes not truly free and is prevented from fully solving these issues due to current corporate law. She said this bill is a pro-business bill that will create a new voluntary business form known as a benefit corporation. Benefit corporations deregulate the purpose of a corporation by allowing the free market and not government to decide on how the business operates. This new form gives the freedom to entrepreneurs and business owners to consider other factors in addition to profit. In all other areas, including taxes and regulation, benefit corporations are the same as a traditional corporation.

Ms. Fisher stated there is an added risk for corporations. Traditional corporations may only consider additional factors if their end goal is higher profits. This is referred to as the business judgment rule, and it was the very reason Delaware passed the benefit corporation legislation. Delaware believed that without the law, the business judgment rule hindered the advancement of the free market. She said this is the case for many companies that must justify their pursuit of a mission for the sake of marketing or public relations. However, companies are always at risk of a shareholder lawsuit if they are not a benefit corporation. The impediments inherent in the traditional corporate form are particularly evident at the time of sale, succession, or during any capital raises, when many companies may have to abandon their missions in order to avoid a shareholder lawsuit or may have to simply not expand their operations.

Ms. Fisher said benefit corporation legislation also provides a cost-free economic development tool for states, because companies that voluntarily choose this form create an annual benefit report, similar to an annual financial report, but focused on their qualitative activities.

She said several companies have left their home state to incorporate in states that have benefit corporation legislation. Benefit corporation legislation is a completely voluntary cost-free option that deregulates the traditional fiduciary duty of a corporation and allows the free market to solve some of the pressing issues facing society. The legislation can help attract jobs and investment and provide economic development opportunities to Idaho.

Vice Chairman Patrick and **Ms. Fisher** had a conversation about benefit corporations and the consideration of other factors in addition to profit.

PASSED GAVEL:

Vice Chairman Patrick passed the gavel to Chairman Tippets.

TESTIMONY:

Steve Doud, Vice President of Sales, Jitasa, testified in support of this bill. He said benefit corporations are a new voluntary business form that gives the freedom to entrepreneurs and business owners to consider other factors in addition to profit when operating their businesses. He said he believed benefit corporation legislation could bring significant economic and social improvements to Idaho without any financial cost to the State.

Mr. Doud said Jitasa was the corporate recipient of the 2014 Governor's Brightest Star Award and is the first and largest national provider of finance and accounting services exclusively supporting the nonprofit sector. If Jitasa can attain the status of a benefit corporation, that will directly strengthen the market and differentiate competition. This legislation provides businesses the freedom to expand their markets. Idaho needs additional tools to encourage business growth and benefit corporation legislation does this through encouraging growth within the free market. This legislation can help Idaho attract and build businesses, jobs and investment.

Russ Stoddard, president and owner of Oliver Russell, testified in support of this bill. He said his company is a brand-marketing firm and has been conducting business from Boise headquarters since 1991. He said he thought the best way to enable companies to address demands from the marketplace is for the State to give business owners the latitude to choose a legal structure that allows the creation of the type of company they want. He said he believed the benefit corporation was the best way to accomplish that goal.

Mr. Stoddard said his business and the State can become more competitive by providing the voluntary option of benefit corporations. By giving entrepreneurs and business owners the freedom to consider other factors in addition to profit when operating their businesses, new economic development would be encouraged in Idaho.

Vice Chairman Patrick and **Mr. Stoddard** talked about the primary differences between a C corporation and a benefit corporation, and that other objectives can be considered without a concern about profit and retribution from stockholders.

Decker Rolph, Investor, Chief Executive Officer of Woulg Holdings, Limited Liability Corporation (LLC); and Executive Producer of Treefort Music Fest (Fest), testified in support of the bill. He talked about his wife, Jessica, who is co-founder and Chief Operational Officer of HappyFamily, a highly successful, growth stage, organic children and baby food company and a certified B corporation. He said the passage of benefit corporation legislation in states across the country has created a new kind of company with expanded fiduciary duties that create value for investors and shareholders, but also for stakeholders. Importantly, this new corporate form provides a basis for entrepreneurs and investors to align themselves around the goal of building long term value.

Mr. Rolph stated he believes investing in businesses that do well by doing good is not only the best way to put capital to work in growing the local and national economy, but also offers the greatest opportunity for generating a long-term return on investments. Many high profile investors around the country are already investing in benefit corporations.

The benefit corporations' expanded fiduciary duty to consider the long-term impact of their actions on a wider group of stakeholders combats short term decision-making by directors and officers and helps investors hold

management accountable. Benefit corporations afford shareholders an efficient means of understanding and benchmarking the impact of their investment dollars.

Mr. Rolph said an investment in a business is not just an investment in a particular product or technology, it is an investment in the people that make up that company. Research shows that companies pursuing more than just profit, but also a purpose, will better attract and retain talented employees. Benefit corporations in Idaho will lead to a higher quality workforce and in turn more successful companies and investments.

Senator Schmidt asked Mr. Rolph if shareholders frequently sue corporations for mismanagement or not returning profit as expected. **Mr. Rolph** said he was unclear as to the frequency but said shareholders could prove mismanagement or a poor return on profit in court.

Senator Lakey and **Mr. Rolph** had a conversation about Fest and the qualifications for a B corporation. They talked about national bands and artists coming to Idaho for the Fest and, because choices were limited, Treefort had to become an LLC.

Mark Buchanan, law professor from Boise State University, testified in support of the bill. He said he wanted to answer some of the questions that were raised in the prior testimonies. He said the tax status of a corporation was not impacted by a benefit corporation status. There is no relationship between a C or an S corporation.

Senator Winder thanked the Committee and asked for their support.

MOTION:

Senator Lakey moved to send **S 1076** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Winder will carry the bill on the floor.

S 1062:

Direct Primary Care. This item was continued from the meeting of March 3, 2015. **Representative Luker** said he wanted to move on to the testimony.

TESTIMONY:

Steve Thomas, representing the Idaho Association of Health Plans (Association), spoke in opposition to the bill and said he tried to match the testimony on Tuesday to the bill. He said the bill was actually broader. He said some suggested changes were drafted for direct primary care, which would not involve insurance companies. He said members of the Association do not support the bill as written.

Elizabeth Criner, representing the Idaho State Dental Association, spoke in support of the bill. She said the bill ensures freedom to contract with patients for dental insurance.

Dr. Kim Keller, direct primary care provider in dentistry and practicing in Canyon County, said 45 percent of his new patients are uninsured. He remarked that dental insurance is not a permission slip to see a health care provider. He said he felt he had to create a way for the 45 percent uninsured to come to the dentist. There are concerns about cost and some people presume they do not have dental needs. By using direct primary care, half of the 45 percent have signed up for the plan.

Senator Cameron and **Dr. Keller** had a conversation about how Dr. Keller's practice could change with the passage of this legislation, the effect on the direct primary care plans and the effect on his practice as a contracted provider for an insurance company. **Dr. Keller** said with the non-passage of

this bill, he would be forced to lower his fees in order to have the insurance company send him patients. Each insurance company negotiates the price they will pay for each procedure and Dr. Keller's fees are based on negotiated prices. **Dr. Keller** said his goal was to try to drop prices for those patients who have a contract with him, but they do not receive any preferential treatment over those who do have insurance.

Senator Heider said he was concerned about where direct primary care ends when extenuating circumstances arise with a patient. **Dr. Keller** said the direct primary care plan is not offered to anyone with insurance. **Senator Heider** said the limitation of having a direct primary care plan does not prohibit the dentist from billing the insurance company. **Dr. Keller** replied that if someone has insurance, they would not be interested in purchasing a plan. His plan is only for those who have no insurance.

Senator Lakey wanted to know about the uninsured client who purchases a plan and needs a crown, for example. **Dr. Keller** stated the fee was for basics, but membership in the plan offered a discount on other services.

Shad Priest, representing Regence Blue Shield and Cambia Health Solutions, an affiliate plan of Regence, spoke in opposition to the bill. He said several states have adopted direct primary care laws with no problems, which is a move to more patient-centered care. He stated this bill was not a direct primary care bill. He said the consequences of this bill go beyond direct primary care. He gave a brief history of other states who have adopted direct primary care laws which are limited for direct primary care services. The reason other states have limited laws for direct primary care is because they did not want health care providers to start becoming or acting like insurance companies. As currently written, there are no limitations in this bill between a practice, a group of practices, a pharmacy, hospital or some combination acting as health insurers. The bill would exempt from regulation what Chapter 39, Title 41 was made to oversee.

Russ Hendricks, Idaho Farm Bureau (Bureau), testified in support of the bill. He said it was unusual for the Bureau to address a health care issue, but many of the members of the Bureau are also consumers of health care, with many living in underserved, rural areas. He cited the Bureau policy that supports legislation that permits, promotes and/or assists in the development of direct primary care in Idaho. The Bureau views this bill as enabling legislation which allows another health care option to be available for those who choose to use it. The bill does not require anyone to use direct primary care, nor does it in any way disadvantage those providers or consumers who do not choose to use direct primary care.

Norm Varin, Manager of Government Affairs, representing Pacific Source Health Plans, spoke in opposition to the bill. He said Pacific Source supports the concept of primary care and primary care medical homes. The breadth of the definition is not supported by the Affordable Care Act (ACA). He said the plan would not include any care given by any other professionals and would only include a wrap-around plan. **Mr. Varin** said the act does not require the provider to renew or continue the agreement, which is a requirement currently in place for insurance companies. This creates the opportunity for the provider to only provide care for patients they choose. This will more than likely allow providers to end agreements with members that utilize too many resources. Being terminated outside of open enrollment would mean the patient would not have access to care until the next open enrollment.

Senator Lakey clarified that Mr. Varin was in support of direct primary care, but not with such a broad definition. **Senator Lakey** and **Mr. Varin** talked about including physicians in a wrap-around plan, but not necessarily dentists.

Dr. Mark Gregg, Meridian dentist, spoke in support of this bill. He said he just returned from a workshop in Atlanta, Georgia about direct primary care. He said he has been studying direct primary care for the past two years and he thinks this is a good model for the system for physicians and patients. He mentioned some of the advantages, such as improvement in quality of care, savings of health care dollars, and allowing physicians to stay in practice longer and provide an enhanced relationship with patients. He said a bill in Idaho is needed to cut healthcare costs. This bill was modeled after legislation passed in the State of Washington.

Dr. Vicki Wooll, family physician, spoke in support of this bill. She said she manages many patients with chronic diseases who are soaking up health care dollars. By having direct primary care available to these types of patients, costs would be reduced. She said there are many regulations and bill coding is increasing. Many physicians are retiring because of these issues. She said she thought direct medical care was a good business model and it was not insurance.

Ken McClure, attorney, Idaho Medical Association, said it was not uncommon to see obstetrical care and routine births covered by a direct medical care agreement, but a cesarean section would cost more. A major medical policy is necessary for things that are not routine medical care. He said if the Committee is inclined to limit the scope of the bill to physicians, an amendment could be made.

Senator Cameron and **Mr. McClure** had a conversation about this act unintentionally undoing the good work the State of Idaho did with managed care organizations. **Mr. McClure** said he disagreed and said this bill supplements and provides another tool.

Representative Luker mentioned he had heard concerns in the last meeting and has a proposed amendment which deletes "or otherwise legally authorized" and inserts "under title 54, Idaho Code," on lines 5 and 6. He expressed a concern about unduly restricting the legislation to physician groups because there are many who provide primary care. He stated the free market should not be unduly restricted, and physicians should not be told how to run their practice. He said the problem is that government and insurance companies have too many regulations, and the physicians need to return to a direct relationship with patients. He asked the Committee to send this bill to the 14th Order for amendment.

Senator Lakey wanted to know if Title 54 covered doctors and dentists. **Representative Luker** replied that was correct. **Senator Lakey** wanted clarification from Representative Luker asking if this bill was to be sent to the 14th Order and **Representative Luker** said yes.

MOTION:

Senator Schmidt moved that **S 1062** be referred to the 14th Order for amendment. **Senator Lakey** seconded the motion.

Senator Martin asked for clarification on sending the bill to be amended. **Senator Cameron** said he had problems with the bill as written. He said there was a risk of having multiple competing amendments on the Senate floor. He said the main question of the bill is whether or not it can exist and at what point should it be regulated. He suggested the Committee hold the bill until the factions could agree upon a unified amendment. He said he would prefer this alternative. **Senator Lee** agreed and said she wanted something all could support.

**SUBSTITUTE
MOTION:**

Senator Cameron moved to hold **S 1062** in Committee at the discretion of the Chair. **Senator Lee** seconded the motion.

Senator Lakey said he wanted the momentum to continue and the bill to move forward.

ROLL CALL VOTE:

Chairman Tippetts called for a roll call vote. **Senators Cameron, Heider, Lee, Ward-Engelking** and **Chairman Tippetts** voted aye. **Senators Martin, Lakey, Schmidt** and **Vice Chairman Patrick** voted nay. The motion carried.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 3:07 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 10, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 24, 2015	Senator Martin
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Candace Sweigart, Idaho Health Insurance Exchange	Candace Sweigart
GUBERNATORIAL APPOINTMENT	Committee Consideration of the Gubernatorial Appointment of Jerry Edgington, Idaho Health Insurance Exchange	Jerry Edgington
<u>S 1062</u>	Direct Primary Care	Representative Luker and Senator Thayn
<u>H 30</u>	Relating to Certified Shorthand Reporters	Tana Cory, Bureau Chief, Bureau of Occupational Licenses
<u>H 81</u>	Relating to Geologist Exams	Tana Cory
<u>H 78</u>	Relating to Employment Security Law	Bob Fick, Communications Manager, Department of Labor
<u>H 46</u>	Relating to Stand Alone Dental Plan	Representative Packer, Bill Roden, Delta Dental

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 10, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of February 24, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Candace Sweigart, of Boise, Idaho, to the Idaho Health Insurance Exchange (Board), term commencing February 5, 2015 and expiring on April 10, 2017.

Ms. Sweigart thanked the Commerce and Human Resources Committee (Committee) for the opportunity of serving on the Board. She said she is an Idaho native and small business owner of a software development agency. She has a background in marketing and information technology and would like to bring her expertise to the Board. Additionally, she said her firm has extensive background in developing software solutions for healthcare and has a strong interest in companies looking to improve healthcare for patients. She said she is excited about what Your Health Idaho (YHI) has been able to accomplish and would love to be a part of the organization's success.

Senator Schmidt wanted to know in what capacity she would be serving on the Board. **Ms. Sweigart** stated she was serving in the small business category. **Senator Lakey** and **Ms. Sweigart** had a conversation about what a certified scrum master did as applied to software development methodology. **Ms. Sweigart** explained a scrum master is the facilitator for a product development team that uses scrum, a rugby analogy for a development methodology that allows a team to self-organize and make changes quickly. The scrum master manages the process for how information is exchanged.

Senator Cameron and **Ms. Sweigart** discussed her experience with insurance and how her background may influence her decisions. She said primarily her decisions will be technology-focused with the goal of making YHI sustainable. She said she was fond of an Idaho program and the aspect of a small business with YHI.

GUBERNATORIAL APPOINTMENT: **Senator Cameron** moved to send the gubernatorial appointment of Candace Sweigart to the Idaho Health Insurance Exchange Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Buckner-Webb will carry the appointment on the floor.

**GUBERNATORIAL
APPOINTMENT
AND HEARING:**

The appointment of Jerry Edgington of Boise, Idaho, to the Idaho Health Insurance Exchange (Board), term commencing February 24, 2015 and expiring on April 10, 2017.

Mr. Edgington said that as the Vice President and General Manager of SelectHealth of Idaho, he is interested in and supportive of the efficient operation of the Your Health Idaho Exchange marketplace, and in particular, in Idahoans purchasing insurance. He said Your Health Idaho (YHI) was unique, well received and functional.

Senator Heider wanted to know if Mr. Edgington saw any conflict with his job at SelectHealth and serving on the Board. **Mr. Edgington** said by being on the Board, he has gained insight and feels he is not biased or influenced in any way. He said insurance must be made simple and understandable to the public.

Senator Cameron disclosed, for the record, that he has worked with Mr. Edgington, not only with his company, but with him. **Senator Cameron** said Mr. Edgington is a person of high caliber, and he could not think of a better person to serve on the Board.

**GUBERNATORIAL
APPOINTMENT:**

Senator Schmidt moved to send the gubernatorial appointment of Jerry Edgington to the Idaho Health Insurance Exchange Board, to the floor with the recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the appointment on the floor.

S 1062:

Relating to Direct Primary Care. **Chairman Tippetts** said there had been public testimony at prior meetings, and this bill had been held in Committee at the call of the Chair. He said the purpose of hearing this bill was to consider further amendments.

TESTIMONY:

Suzanne Budge, representing the National Federation of Independent Businesses, testified in support of the bill and said she appreciated the option of having health care.

Senator Thayn thanked the Committee for their time. He said originally the bill was a little broader. He referred to a draft amendment, a copy of which is attached (see attachment 1), and asked the Committee to send the draft to the Amending Order. He stated this was not the time to include dentists, which could be problematic. He pointed out that page 2, line 10 included an amendment and clarification that a "primary care provider" means a natural person licensed or otherwise legally authorized to provide health care services. He said line 9 was changed to "services are rendered in the primary care provider's office or the patient's home" and line 12 lists three practices, namely, "in the field of pediatrics, family practice or internal medicine." He said the term "general practitioner" should be added. On line 39 the verbiage was removed relating to billing an insurer. **Senator Thayn** said the remainder of the amendments were small.

Senator Lakey and **Senator Thayn** discussed the amendments, including the change to "a natural person." **Senator Martin** wanted to know what the effect would be on the bill if line 12, which refers to pediatrics, family practice or internal medicine, was stricken. **Senator Thayn** said obstetrics and gynecology doctors would be included as primary care providers, which would add complexity to the bill. **Senator Martin** wanted to know if dentists could still provide services if they were excluded. **Senator Thayn** answered by saying if the dentists are not violating the insurance codes and the law, he thought

dentists could still provide services.

Senator Heider and **Senator Thayn** discussed the concept of a patient having a contract with a doctor and also paying for an insurance policy and the issues surrounding those items. They talked about the agreement which delineates what takes place under direct primary care. **Senator Thayn** pointed out that in the State of Washington those individuals who purchase direct primary care, pay for it with their own money and do not use insurance. For the employer the reduction is in downstream costs. The hope is that if a safe haven is created, direct primary care is enhanced and a wrap-around policy would be generated by the insurance companies.

Senator Schmidt said the phrase "of services rendered in the primary care provider's office or the patient's home" may be too restrictive. He wondered if doctors with these relationships follow patients to hospitals and if care fell under the direct medical care agreement. **Senator Thayn** said doctors can manage patient care in the hospitals.

Senator Lakey asked Senator Thayn to clarify his statement that dental should be included in the bill, but not this year. **Senator Thayn** said, "yes." **Vice Chairman Patrick** said if dental care was not included, applying insurance standards to these contracts would not be pursued this year. **Senator Thayn** said he thought direct medical care contracts are not currently regulated. He hoped this bill would help.

Senator Lee said she would like to see dentists included in the amendment, which would make primary care more clear. **Senator Thayn** stated he wanted to know where to draw the line for dentists as it relates to primary care, what it is and what it is not. **Chairman Tippetts** reminded the Committee a decision would not be made at this meeting on the proposed amendments.

TESTIMONY:

Ken McClure, representing the Idaho Medical Association, spoke in favor of amending the bill and presented an amendment which is attached (see attachment 2). He said the concept was similar to what Senator Thayn proposed. He referred to the lines that were crossed out in the amendment. In Subsection 3 "which services are rendered in the primary care provider's office or the patient's home" was deleted because the definition was too narrow. The definition of a primary care provider was expanded to "or a natural person practicing in a legal form allowed by such person's license", dentistry was added, and "general practice of medicine, obstetrics and gynecology (OB/GYN)" are added. **Mr. McClure** commented that half of the women in Idaho treat their OB/GYN as their primary doctor. He expressed a concern that a provider would not be included. He stated that neither party should be able to cancel the contract without the consent of the other.

Senator Cameron stated that insurance plans under the Affordable Care Act (ACA) are required to cover maternity. He wanted to know how a pregnant woman who signed up for direct primary care would work with the regular insurance company. **Mr. McClure** said if a physician wanted to offer direct primary care to a pregnant woman she would be covered. **Senator Cameron** and **Mr. McClure** discussed maternity care. Primary care would be covered by direct primary care in this amendment. The amendment would also address non-regulation by the Department of Insurance (DOI) of direct primary care contracts. **Senator Cameron** said he wanted to prevent a future situation where a direct primary care provider crossed the line and then they could not be regulated or the consumer protected.

Senator Schmidt and **Mr. McClure** discussed the definition of "health care providers" and how the term applies to anyone who provides health care.

Senator Lakey stated he was not aware of any provision in the ACA that would prohibit the Committee from incorporating dental into this legislation. **Mr. McClure** said he thought dental could be incorporated into the legislation.

Senator Martin referred to the broad definition of "primary care provider" and wanted to know why the term should be specified. **Mr. McClure** stated the Committee and the sponsor were not in favor of a previous amendment, so that was why the definition was added.

TESTIMONY:

Julie Taylor, Director of Governmental Affairs, Blue Cross, spoke in opposition to the scope of the original bill. She indicated Blue Cross had been talking with Senator Thayn about the possibility of a wrap-around policy. A wrap-around policy can only be wrapped around a medical home or direct primary care agreement. She stated the bill is really primary care and not direct primary care. She said Blue Cross is in support of Senator Thayn's amendment.

Senator Cameron and **Senator Thayn** discussed the amendment and the provision that does not allow an individual to seek reimbursement from the insurance company. **Senator Cameron** said he could envision a patient having a direct primary care contract and an insurance policy, and he wanted to know why the patient would not be able to submit a "fee for services rendered" to the insurance company for reimbursement. **Senator Thayn** stated they were trying to gradually familiarize the insurance companies and the direct primary care providers with the bill to make them aware of the provisions. This item can be addressed at a future time.

MOTION:

Senator Lakey moved that **S 1062** be referred to the 14th Order for amendment. **Senator Martin** seconded the motion.

Senator Heider commented he likes the concept, but not the details and that a consumer may be disappointed if they had to enroll in an insurance program. He said he was reticent to move forward.

Senator Lakey said he would have preferred to have everyone agree on the same issue, and it is important to recognize direct primary care is not insurance. He wanted to continue to move forward. **Senator Cameron** said he was concerned; at what point is it important for the DOI to step in and regulate. He expressed concern about when this becomes a prepaid medical plan or assumes risk, it then should be regulated by the DOI. He remarked that when there are large expensive claims, there could be a situation where the wealthy could receive preferential treatment. He expressed a desire for both sides to agree. He remarked he was willing to move forward with an amendment, but would like to have a more consensus bill.

The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor.

H 30: **Relating to Certified Shorthand Reporters.** **Roger Hales**, Attorney, Bureau of Occupational Licenses (Bureau), said this bill will allow the State Certified Shorthand Report Board (Board) to clarify permits; to correct the title of the state association; to clarify the number of permits allowed; to remove the fee for temporary permits that have been suspended or revoked; to remove the deadline for examinations; and to clarify that temporary permit holders may seek judicial review. There is no fiscal impact on the General Fund or dedicated funds.

Roger Hales, said the Board is made up of three shorthand reporters, a district judge, and a licensed attorney. The Board regulates the practice of shorthand reporting in Idaho in both a private and courtroom setting. He said the \$100 reinstatement fee, the 120-day advanced notice for the examination and the 30-day notice filing date for any person desiring to take the reporters examination prior to the exam were being eliminated.

Senator Lakey wanted to know if notice was provided under the open meeting law and **Mr. Hales** said the notice was on the website.

MOTION: **Senator Schmidt** moved to send **H 30** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor.

H 81: **Relating to Geologist Exams.** **Roger Hales**, Attorney, Bureau of Occupational Licenses (Bureau), testified on behalf of Professional Geologists. This bill will allow the Idaho Board of Registration for Professional Geologists to clarify by rule the examination process. The changes will also allow geology students to take one of the two examinations required for licensure while still in college. This is consistent with most states. The second exam is typically taken after an individual graduates and obtains certain supervised experience. There is no impact on general or dedicated funds. There has been no opposition to this bill.

Senator Schmidt and **Mr. Hales** discussed the national proprietary exam and the consistency throughout the states.

MOTION: **Senator Martin** moved to send **H 81** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 78: **Relating to Employment Security Law.** **Bob Fick**, Communications Manager, Department of Labor (Department), said that in 2013 the Legislature approved changes to Idaho Code § 72-1369 that were required by the federal Trade Adjustment Assistance Extension Act of 2011 (Public Law 112-40). The United States Department of Labor has now informed the Department that a technical correction is necessary to this language to clarify that of the civil penalty amounts collected, an amount equal to 15 percent of the total overpayment must be paid into the Employment Security Fund created by Idaho Code § 72-1346. There is no fiscal impact to the General Fund or to local government funds. He went over the monetary civil penalties outlined in the bill.

MOTION: **Senator Schmidt** moved to send **H 78** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Lee will carry the bill on the floor.

H 46:

Relating to Stand Alone Dental Plan. **Representative Packer** said the proposed legislation provides a definition of the term "stand-alone dental plan" and clarifies the plan is for children. Stand-alone dental plans are specifically authorized to be sold on the Idaho Health Insurance Exchange (Exchange), but the term is not defined in current law. This proposal provides necessary clarification of the term. There is no fiscal impact.

Senator Schmidt wanted to know how many dental plans were available. **Bill Roden**, representing Delta Dental, said there were plans available on the Exchange. **Jane DeLuca**, Chief Executive Officer, Delta Dental, said that within the State, almost everyone buys dental benefits as a family. She added that the technology with Your Health Idaho could not support both adults and children.

Senator Cameron indicated that anyone who purchases insurance through the Exchange is offered the opportunity to purchase stand-alone dental plans. **Senator Cameron** disclosed for the record, as a licensed agent, he sells Delta Dental insurance.

MOTION:

Senator Cameron moved to send **H 46** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:55 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

DRAFT

Attachment 1
Shayn

DRELB179

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

This bill draft contains confidential and privileged information exempt from disclosure under Section 9-340F(1), Idaho Code. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning the Legislative Services Office at (208) 334-2475.

AN ACT

RELATING TO HEALTH CARE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 92, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DECLARE PUBLIC POLICY AND TO PROVIDE THAT DIRECT PRIMARY CARE AGREEMENTS DO NOT CONSTITUTE INSURANCE, TO DEFINE TERMS, TO SPECIFY THAT DIRECT PRIMARY CARE AGREEMENTS INCLUDE CERTAIN PROVISIONS, TO PROHIBIT MEDICAL PROVIDERS FROM BILLING INSURERS FOR DIRECT PRIMARY CARE, TO PROVIDE THAT DIRECT PRIMARY CARE AGREEMENTS SHALL NOT BE REGULATED AS INSURANCE, TO PROVIDE THAT DIRECT PRIMARY CARE AGREEMENTS INCLUDE A DISCLAIMER AND TO RESTRICT SALES OR TRANSFERS OF DIRECT PRIMARY CARE AGREEMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 92, Title 39, Idaho Code, and to read as follows:

CHAPTER 92

IDAHO DIRECT PRIMARY CARE ACT

39-9201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Direct Primary Care Act."

39-9202. PUBLIC POLICY. It is the policy of the state of Idaho to promote personal responsibility for health care and the cost-effective delivery of medical services by encouraging innovative use of direct patient-provider practices for primary medical care. Direct patient-provider practices utilize a model of periodic fees for provider access and medical management over time, rather than simply a fee for visit or procedure service model. Some patients and individual primary care providers may wish to establish direct agreements with one another as an alternative to traditional fee-for-service care financed through health insurance. The purpose of this act is to confirm that direct patient-provider agreements that satisfy the provisions of this chapter do not constitute insurance.

39-9203. DEFINITIONS. For purposes of this chapter, the following definitions apply:

(1) "Direct primary care agreement" means a written contract between a primary care provider and an individual patient or a patient's representative in which the primary care provider agrees to provide direct primary care services to the patient over a specified period of time for payment of a direct fee.

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1 (2) "Direct fee" means an agreed-upon fee charged by a primary care
2 provider as consideration for providing and being available to provide di-
3 rect primary care services described in a direct primary care agreement.

4 (3) "Direct primary care services" means those services that a primary
5 care provider is licensed or otherwise legally authorized to provide and may
6 include, but are not limited to, such services as screening, assessment, di-
7 agnosis and treatment for the purpose of promoting health, and detection,
8 management and care of disease or injury, which services are rendered in the
9 primary care provider's office or the patient's home.

10 (4) "Primary care provider" means a natural person licensed or other-
11 wise legally authorized to provide health care services in the state of Idaho
12 in the field of pediatrics, family practice or internal medicine, who pro-
13 vides such services either alone or in professional association with others
14 in a form and within a scope permitted by such licensure or legal authoriza-
15 tion for the provision of such services, and who enters into a direct primary
16 care agreement.

17 (5) "Patient" means a person who is entitled to receive direct primary
18 care services under a direct care agreement.

19 (6) "Patient's representative" means a person identified in section
20 39-4504(1) (a) through (g), Idaho Code.

21 39-9204. DIRECT PRIMARY CARE AGREEMENT PROVISIONS. (1) A direct pri-
22 mary care agreement shall identify:

23 (a) The primary care provider and the patient;

24 (b) The general scope of services as well as the specific services to be
25 provided by the primary care provider;

26 (c) The location or locations where services are to be provided;

27 (d) The amount of the direct fee and the time interval at which it is to
28 be paid; and

29 (e) The term of the agreement and the conditions upon which it may be
30 terminated by the primary care provider. The agreement shall be ter-
31 minable at will by written notice from the patient to the primary care
32 provider.

33 (2) If a party provides written notice of termination of the direct pri-
34 mary care agreement, the primary care provider shall refund to the patient
35 all unearned direct fees within thirty (30) days following the notice of ter-
36 mination.

37 39-9205. INSURANCE BILLING PROHIBITED. Neither the patient nor the
38 primary care provider shall submit a bill to an insurer for the services pro-
39 vided under a direct primary care agreement.

40 39-9206. AGREEMENTS NOT CLASSIFIED AS INSURANCE. Direct primary care
41 agreements are not subject to regulation as insurance under title 41, Idaho
42 Code.

43 39-9207. DISCLAIMER. A direct primary care agreement shall include
44 the following disclaimer: "This agreement does not provide health insurance
45 coverage, including the minimal essential coverage required by applicable
46 federal law. It provides only the services described herein. It is recom-

DRAFT

DRELB179

3

1 mended that health care insurance be obtained to cover medical services not
2 provided for under this direct primary care agreement."

3 39-9208. RESTRICTIONS ON TRANSFER. A direct primary care agreement
4 may not be sold or transferred by the primary care provider without the
5 written consent of the patient and may be transferred only to another pri-
6 mary care provider. A direct primary care agreement may not be sold to a
7 group, employer or group of subscribers because it is an individual agree-
8 ment between a primary care provider and a patient. These limitations do
9 not prohibit the presentation of marketing materials to groups of potential
10 patients or their representatives but said marketing materials are subject
11 to chapter 6, title 48, Idaho Code.

DRAFT

DRELB179

4

- 1 DIRECT MEDICAL CARE ACT - Adds to existing law to establish the Direct Medi-
- 2 cal Care Act.

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

AN ACT
RELATING TO HEALTH CARE; AMENDING TITLE 39, IDAHO CODE, BY THE
ADDITION OF A NEW CHAPTER 92, TITLE 39, IDAHO CODE, TO PROVIDE A
SHORT TITLE, TO DECLARE PUBLIC POLICY AND TO PROVIDE THAT DIRECT
PRIMARY CARE AGREEMENTS DO NOT CONSTITUTE INSURANCE, TO DEFINE
TERMS, TO SPECIFY THAT DIRECT PRIMARY CARE AGREEMENTS INCLUDE
CERTAIN PROVISIONS, TO PROHIBIT MEDICAL PROVIDERS FROM BILLING
INSURERS FOR DIRECT PRIMARY CARE, TO PROVIDE THAT DIRECT PRIMARY
CARE AGREEMENTS SHALL NOT BE REGULATED AS INSURANCE, TO PROVIDE
THAT DIRECT PRIMARY CARE AGREEMENTS INCLUDE A DISCLAIMER, TO
RESTRICT SALES OR TRANSFERS OF DIRECT PRIMARY CARE AGREEMENTS AND
TO SPECIFY THE EFFECT OF THIS CHAPTER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby
amended by the addition thereto of a NEW CHAPTER, to be known and
designated as Chapter 92, Title 39, Idaho Code, and to read as
follows:

CHAPTER 92
IDAHO DIRECT PRIMARY CARE ACT

39-9201. SHORT TITLE. This chapter shall be known and may be
cited as the "Idaho Direct Primary Care Act."

39-9202. PUBLIC POLICY. It is the policy of the state of Idaho to
promote personal responsibility for health care and the cost-effective
delivery of medical services by encouraging innovative use of direct
patient-provider practices for primary medical care. Direct patient-
provider practices utilize a model of periodic fees for provider
access and medical management over time, rather than simply a fee for
visit or procedure service model. Some patients and individual primary
care providers may wish to establish direct agreements with one
another as an alternative to traditional fee-for-service care financed
through health insurance. The purpose of this act is to confirm that
direct patient-provider agreements that satisfy the provisions of this
chapter do not constitute insurance.

3/10/15

39-9203. DEFINITIONS. For purposes of this chapter, the following definitions apply:

(1) "Direct primary care agreement" means a written contract between a primary care provider and an individual patient or a patient's representative in which the primary care provider agrees to provide direct primary care services to the patient over a specified period of time for payment of a direct fee.

(2) "Direct fee" means an agreed-upon fee charged by a primary care provider as consideration for providing and being available to provide direct primary care services described in a direct primary care agreement.

(3) "Direct primary care services" means those services that a primary care provider is licensed or otherwise legally authorized to provide and may include, but are not limited to, such services as screening, assessment, diagnosis and treatment for the purpose of promoting health, and detection, management and care of disease or injury, ~~which services are rendered in the primary care provider's office or the patient's home.~~

(4) "Primary care provider" means a natural person (or a natural person practicing in a legal form allowed by such person's license) who is licensed or otherwise legally authorized to provide health care services in the state of Idaho in the field of dentistry, pediatrics, family practice, general practice of medicine, obstetrics and gynecology or internal medicine, who provides such services either alone or in professional association with others in a form and within a scope permitted by such licensure or legal authorization for the provision of such services, and who enters into a direct primary care agreement.

(5) "Patient" means a person who is entitled to receive direct primary care services under a direct care agreement.

(6) "Patient's representative" means a person identified in section 39-4504 (1) (a) through (g), Idaho Code.

39-9204. DIRECT PRIMARY CARE AGREEMENT PROVISIONS. (1) A direct primary care agreement shall identify:

- (a) The primary care provider and the patient;
- (b) The general scope of services as well as the specific services to be provided by the primary care provider;
- (c) The location or locations where services are to be provided;
- (d) The amount of the direct fee and the time interval at which it is to be paid; and
- (e) The term of the agreement and the conditions upon which it may be terminated by the primary care provider. The agreement shall be terminable at will by written notice from the patient to the primary care provider.

(2) If a party provides written notice of termination of the direct primary care agreement, the primary care provider shall refund to the patient all unearned direct fees within thirty (30) days following the notice of termination.

39-9205. INSURANCE BILLING PROHIBITED. Neither the patient nor

the primary care provider shall submit a bill to an insurer for the services provided under a direct primary care agreement; however, a patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This limitation does not prohibit a direct primary care provider from billing insurance for services not provided under a direct primary care agreement.

39-9206. AGREEMENTS NOT CLASSIFIED AS INSURANCE. Direct primary care agreements are not subject to regulation as insurance under title 41, Idaho Code.

39-9207. DISCLAIMER. A direct primary care agreement shall include the following disclaimer: "This agreement does not provide health insurance coverage, including the minimal essential coverage required by applicable federal law. It provides only the services described herein. It is recommended that health care insurance be obtained to cover medical services not provided for under this direct primary care agreement."

39-9208. RESTRICTIONS ON TRANSFER. A direct primary care agreement may not be ~~sold or~~ transferred by either party ~~the primary care provider~~ without the written consent of the ~~patient~~ other party and may be transferred by a primary care provider only to another primary care provider. A direct primary care agreement may not be sold to a group, employer or group of subscribers because it is an individual agreement between a primary care provider and a patient. These limitations do not prohibit the presentation of marketing materials to groups of potential patients or their representatives ~~but said marketing materials are subject to chapter 6, title 48, Idaho Code.~~

39-9209 EFFECT OF THIS CHAPTER. The purpose of this chapter is to assure that primary care providers who comply with this chapter do not violate any provision of title 41, Idaho Code. Nothing in this chapter shall be construed to prohibit health care providers who are not primary care providers from entering into direct care agreements with patients to the extent such agreements do not violate the provisions of title 41, Idaho Code.

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 12, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 26, 2015	Senator Lakey
<u>H 59</u>	Related to Plumbing	Steve Keys, Deputy Administrator of Operations, Division of Building Safety
<u>HCR 006</u>	Public Employee Retirement System of Idaho (PERSI) - Rule Rejection	Don Drum, Administrative Director, PERSI
<u>H 143</u>	Relating to Exempt Employment	Jason Kreinzenbeck, Lobby Idaho
<u>H 120aa</u>	Economic Advisory Council	Jeff Sayer, Director, Department of Commerce

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 12, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

H 59: **Related to Plumbing. Steve Keys**, Deputy Administrator, Division of Building Safety (DBS), said this bill makes three changes to statutory provisions governing the licensing of plumbers in Idaho.

The first change extends the time allowed for an individual to revive his certificate of competency from one year to two years after the expiration of his certificate. The intent is to reduce the number of plumbers required to retake a plumbing examination in order to reinstate their licenses.

Mr. Keys said the other two provisions apply to plumbing contractor licenses. The licensing of plumbing contractors differs from that for electrical contractors, public works contractors, or even the registration of building contractors. In each of those examples, the business entity is considered the "contractor" and is licensed or registered, allowing the entity to conduct business in accord with statutes and rules governing those professions. Plumbing contractors are individuals, akin to master electricians, who are employed by, or own plumbing businesses. The business is required to have the plumbing contractor's license attached to their business in order for the business to legally engage in plumbing contracting. The plumbing business itself is not licensed by the DBS.

This bill would establish an inactive status for contractor licenses, allowing a plumbing contractor whose license is not attached to a plumbing business to keep his certificate of competency in an inactive status without maintaining the \$2,000 code compliance bond that is currently required of all plumbing contractors.

The legislation provides for a temporary plumbing contractor license that would only apply in the event that a licensed plumbing contractor dies or becomes incapacitated. It would allow a licensed journeyman to act in a limited capacity to wind down business operations and complete existing projects. This is intended to mitigate the drastic impact on surviving family members and customers of the plumbing business when unforeseen tragedy strikes and another licensed contractor is not immediately available to attach his license to the business. This provision is driven by a few experiences in recent years where the DBS had to work to facilitate workable situations.

Senator Schmidt wanted to know why plumbing contractors are treated differently than other contractors. **Mr. Keys** said in prior years, in order to own a plumbing business, a contractor had to have a plumbing license. That has since been abandoned and there are plans for officially changing that rule in the future.

MOTION: **Senator Martin** moved to send **H 59** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of February 26, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

HCR 6: **Public Employee Retirement System of Idaho (PERSI) - Rule Rejection.** **Don Drum**, Administrative Director, PERSI, said the Committee previously voted to reject pending rule **Docket No. 59-0103-1401**. That docket would have delayed contribution rate increases but has since been superseded by a rule that eliminated those increases.

HCR 6 is the required next step in the process of rejection of the pending rule.

MOTION: **Senator Patrick** moved to send **HCR 6** to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. Senator Patrick will carry the bill on the floor.

H 143: **Relating to Exempt Employment.** **Jason Kreinzenbeck**, Lobby Idaho, testified on behalf of Idaho Trucking. He said the purpose of this legislation is to provide a specific exemption under the Idaho Employment Security Law (IESL) regarding owner-operators in the trucking industry. Owner-operators are in the independent business of leasing trucks to a motor carrier and supplying drivers to operate the leased trucks. Recent court cases in Idaho have demonstrated the potential misapplication and/or misinterpretation of the current general exemption under the IESL when applied to owner-operators. As a result of these recent court cases, many motor carriers have chosen not to engage owner-operators in Idaho. This legislation would reduce future litigation by providing a clear and concise exemption that can be efficiently administered and enforced by the Department of Labor (DOL) and reasonably relied on by the motor carriers. There is no fiscal impact to the General Fund.

Senator Lakey disclosed, for the record, that his law firm has done some legal work for the Idaho Trucking Association relating to matters of personnel.

TESTIMONY: **Ryan Meikle**, attorney, representing the Idaho Trucking Association, spoke in support of this bill. He said in his practice he often advises motor carriers regarding their contracts, including contract compliance with the federal regulations. Motor carriers typically use a combination of company drivers and owner-operators to transport loads for their customers. This business model is widely utilized throughout the country to address the ongoing shortage of qualified drivers and is specifically addressed in the federal regulations.

Mr. Meikle stated many motor carriers in Idaho are reluctant to engage owner-operators because they are unwilling to accept the potential risk of having their owner-operators reclassified despite their best efforts to comply with the statute. He referred to the Idaho Supreme Court's rulings in Giltner and Western Home Transport, which he said would be addressed in later testimony.

Mr. Meikle said this bill sets forth a clear roadmap that a motor carrier can follow when engaging an owner-operator. To qualify for the exemption, the person operating the motor vehicle must own the motor vehicle or hold the motor vehicle pursuant to a bona fide lease, and the motor vehicle must be

leased to a motor carrier pursuant to a written contract. He said he believes the potential misapplication and misinterpretation of the current statute results from a lack of understanding of the owner-operator model in the trucking industry. Owner-operators are continually in high demand, which allows them to change motor carriers as often as they desire. He said owner-operators have the opportunities and benefits of owning and operating their own business and the financial, lifestyle and entrepreneurial advantages not available to employee drivers.

Mr. Meikle said federal regulations require that agreements between motor carriers and owner-operators include certain provisions to ensure safety of operations and the protection of the public. He said, for example, the federal regulations provide that the owner-operator agreement must provide that the motor carrier "shall have exclusive possession, control, and use of the equipment for the duration of the agreement." The purpose of this requirement is to provide the public some recourse against the motor carrier. The federal regulations also state that this requirement is not intended to affect whether the owner-operator is an independent contractor or employee of the motor carrier.

Idaho courts have held that adherence to federal law governing interstate trucking cannot be used as evidence to show control over a driver. However, despite Idaho case law to the contrary, the DOL continues to consider such language in the agreement as evidence of control as shown by the recent determination that Giltner received from the DOL on February 5, 2015.

Mr. Meikle clarified some of the concerns that have been raised regarding the bill. He said this bill is not intended to change the relationship between the motor carrier and any of its employees. Nothing in the proposed bill allows a trucking company to force an employee to become an independent contractor. A weight requirement was not included in the bill because an arbitrary line based on truck size would be created. Motor carriers use smaller vehicles in their operations when necessary, which is more efficient than using larger vehicles.

Mr. Meikle said that some have argued that the proposed bill is too broad and would permit employers to classify any driver as an independent contractor. The exemption is intended to be broad within the trucking industry but would not extend beyond the trucking industry. The exemption specifically states that the motor vehicle must be leased to a motor carrier as defined in 49 United States Code § 13102, which states that a "motor carrier" means a person providing motor vehicle transportation for compensation. He went on to say the DOL claims that the exemption is so broad that even a pizza delivery driver would be exempt. He said this is not the case. It is unlikely that a pizza restaurant would want to be classified as a motor carrier because the cost of complying with the federal and state laws applicable to motor carriers would likely far outweigh any potential benefit of the exemption.

Lastly, **Mr. Meikle** said some have argued that the proposed exemption would put Idaho in direct conflict with the Federal Unemployment Tax Act (FUTA). Twenty-two states have adopted an exemption similar to the proposed exemption, and the United States DOL has approved all of these states for continued participation in the unemployment insurance program. He said that in his opinion, the proposed exemption does not conflict with FUTA.

Senator Lakey and **Mr. Meikle** discussed how an employee versus an independent contractor is determined, the various requirements of written contracts for leasing vehicles, and whether or not there was a conflict between state and federal law.

TESTIMONY:

Jason Andrus, owner of Doug Andrus Distributing, Idaho Falls, testified in support of the bill. He said his company is the largest Idaho-based trucking company and he has chosen not to participate with owner-operators due to confusion about the law. He said his company did not want to be involved in debate and problems. There is a great shortage in the trucking industry for qualified drivers. Because of the issues involved, owner-operators are being turned away.

Vice Chairman Patrick wanted to know what name would go on the truck if a leased owner-operator was used by Mr. Meikle's company. **Mr. Meikle** said his company name would go on the truck since the trucker would be operating under the authority of his company, and they would be ultimately responsible.

David Leroy, attorney, representing Western Home Transport, testified in support of the bill. He said Western Home Transport is a Boise-based long haul trucking company that serves the manufactured home industry. He said the office employees do not include drivers, and the company only uses independent contractors that lease trucks to the business. He reported there was a self-initiated audit by the DOL of Western Home Transport. The findings of the audit said that instead of having independent contractors, the drivers were employees and that the company owed the State \$13,277 in taxes. There was an appeal, and the DOL said the company owed the money. **Mr. Leroy** said he then took the case to the Industrial Commission (Commission) and the Commission said the report by the DOL was in error. The Commission found for Western Home in part and said the evidence was clear. Eight out of 15 criteria suggested the drivers were independent contractors. He said his client spent \$53,099 in legal fees to avoid a bill of \$13,277.

Brandi Borrowman, Assistant Chief Executive Officer (CEO) of Progressive Logistics, Incorporated, which does business as Giltner, testified in support of the bill. She shared Giltner's experiences with owner-operator reclassification in Idaho. She said she had her own Limited Liability Corporation (LLC) and chose to lease trucks from Giltner due to the buying power they could provide. She said Giltner provided her the opportunity to lease a truck from them and have the opportunity to haul freight with whomever she chose. She signed a separate agreement to solely haul for Giltner's customer base to take in the benefits of having dedicated lanes that provided her company with more stability.

Ms. Borrowman said that in 2007 Giltner was audited by the DOL, which resulted in several owner-operators being reclassified as employees for purposes of the IESL. As a result, Giltner incurred an unemployment tax liability of approximately \$50,000. She said they unsuccessfully appealed the unemployment tax liability to the Commission and eventually to the Idaho Supreme Court. The Idaho Supreme Court's holding was ultimately reversed in a subsequent appeal brought by Western Home Transport.

During the past 20 years, an estimated 60 percent of drivers contacting her firm for a driving position want to become independent contractors rather than employee drivers. In order to continue to use owner-operators as a vital part of the trucking business, changes have been implemented directly from the Fairness and Leasing Act to address the issues that arose in an initial audit by the DOL. Despite considerable efforts to comply, at the beginning of February 2015, another determination from the DOL was received regarding the reclassification of another owner-operator. She highlighted some of the factors considered by the DOL in order to demonstrate the challenge trucking companies face in knowing whether a driver will be classified as an independent contractor or employee.

Ms. Borrowman said that without a clear statutory exemption, there will be ongoing litigation resulting in more wasted resources as the DOL and motor carriers

continue to struggle with the interpretation and application of current statute. The proposed statutory exemption would provide a clear and fair roadmap for entrepreneurs who want to establish their own businesses as owner-operators without fear of expensive classification challenges.

Senator Schmidt wanted to know, from a business standpoint, how to separate owner-operators from employees. **Ms. Borrowman** said there is a written agreement which differentiates between the two. **Senator Schmidt** and **Ms. Borrowman** had a conversation about finding qualified drivers to be employees due to the high turnover. They also talked about an independent contractor bidding for a load through a broker and the set bid rates for some loads.

Senator Lakey and **Ms. Borrowman** talked about how an independent contractor was compensated.

TESTIMONY:

Julie Pipal, President and CEO of the Idaho Trucking Association, testified in support of the bill. She said the bill is not intended to expand the scope of the current exemption, but tailors the exemption to fit the trucking industry to avoid misinterpretation or the misapplication of the existing general statute. Parties that are not motor carriers or owner-operators will not be affected by this bill. No state's program has ever been disapproved under FUTA due to a statutory exemption for owner-operators. This bill requires a bona fide lease be in place if a motor carrier leases a truck to an owner-operator who then leases the truck back to the motor carrier. Such arrangements are sometimes incorrectly perceived as a motor carrier's abuse of the owner-operator status. However, such arrangements most often result from the owner-operator's inability to obtain a truck from any other source due to bad credit or other unfavorable circumstances.

She said this bill will protect the opportunities of entrepreneurs who want to own their own businesses by becoming owner-operators. The bill will not result in all of the drivers in Idaho becoming owner-operators. There will always be employee drivers who do not want the challenges of running their own business, and motor carriers will continue to use a combination of employee drivers and owner-operators to meet the needs of their customers. She remarked there is a current shortage of 30,000 drivers, which has a potential to dramatically increase to 239,000 over the next decade.

As Idaho's economy grows and transportation demands increase, Idaho will also need more drivers. Without this bill, the shortage will become more acute as owner-operators move to more favorable states or choose other industries in which they can own their own businesses.

Chairman Tippets asked what a typical long haul driver makes a year. **Ms. Pipal** said a driver starts at approximately \$41,000 a year, but a qualified driver, those who have been in the industry a long time, will make \$70,000 to \$80,000 annually.

Senator Schmidt said he had a concern about the language in the bill on line 21, page 3, referring to a person who operates a motor vehicle and asked for a definition of "leased or owned." He was worried there may be a broader application which could apply to others. He cited several examples including a pizza delivery person and an airline freight company. **Mr. Meikle** responded to Senator Schmidt's comments and indicated a pizza delivery person or an airline freight company would have to fall under the motor carrier category, if they qualified.

Bob Fick, Communications and Legislative Affairs, DOL, spoke in opposition to the bill. He said audits are done at random on 1 percent of businesses as required by law. He cited a recent completed audit where all 17 drivers were considered

independent contractors. He said the Director of the DOL recognizes there are some concerns for over-the-road truckers, who are vital to Idaho's economy. The DOL has concerns about leases, but wants to provide clarity for the industry. The DOL wants to limit parts of the bill. He referred to page 3, line 21 and said the word "commercial" should be inserted before motor vehicle. He said on line 23, after the word "contract", the phrase "and regulated by the Federal Motor Carrier Safety Administration" should be added.

Chairman Tippets wanted to know about the proposed amendments by the DOL. **Mr. Meikle** talked about the amendments and said he does not believe a statute should be based on a weight requirement as the trucking company should have the freedom to decide on the size and weight of the freight. He was opposed to the amendments.

MOTION: **Vice Chairman Patrick** moved to send **H 143** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Vice Chairman Patrick will carry the bill on the floor.

H 120AA: **Economic Advisory Council.** **Jeff Sayer**, Director, Department of Commerce (Department), testified in support of this bill and said currently there is disparity between how members of two important councils under the purview of the Department are compensated. The Idaho Travel Council (ITC) members receive compensation of \$50 for each day spent in the actual performance of duties, whereas the Economic Advisory Council (EAC) members serve without compensation. With the enhanced responsibilities granted to the EAC during the 2014 legislative session to review applications for the Idaho Tax Reimbursement Incentive, this change is requested to provide EAC members with compensation of \$50 per day to ensure there is parity in compensation for members of these two councils. The ITC is also organized by seven planning regions, whereas the EAC has operated under six planning regions. This legislation would move EAC to a seven region model to create alignment between these two councils.

Mr. Sayer said this legislation will result in an additional financial burden to the Department to reimburse each of the eight members of EAC at a rate of \$50 for each day spent in actual performance of duties. The EAC is required to meet at least quarterly, but is expected to meet a minimum of eight times per year to review applications for the Tax Reimbursement Incentive. The Department is not requesting any additional funds to support this change and will absorb this increase within its existing appropriation.

MOTION: **Senator Lee** moved to send **H 120aa** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Lee will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Tippets** adjourned the meeting at 2:37 p.m.

Senator Tippets
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 17, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of March 3, 2015	Senator Lee
MINUTES APPROVAL	Minutes of March 5, 2015	Senator Heider
<u>RS23614</u>	Unanimous Consent for Referral to Senate State Affairs for Printing	Senator Nuxoll
<u>H 137aa</u>	Public Employee Retirement System of Idaho (PERSI) - Deputy Sheriffs and Police Officers	Michael Kane, Attorney
<u>H 99</u>	Chartered Banks	Gavin Gee, Director, Department of Finance; Mary Hughes, Bureau Chief, Financial Institutions Bureau
<u>H 117</u>	Relating to Occupational License Renewal of Licenses or Registration	Maurie Ellsworth, Counsel, Bureau of Occupational Licenses
<u>H 116</u>	Relating to the Bureau of Occupational Licenses Assessment of Costs and Fees	Maurie Ellsworth, Counsel, Bureau of Occupational Licenses

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 17, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Lee** moved to approve the Minutes of March 3, 2015. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of March 5, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 23614: **Unanimous Consent for Referral to Senate State Affairs for Printing.** **Senator Nuxoll** said this resolution urges Congress to provide another option for citizens to access medical care and reduce costs by allowing a Health Care Sharing Ministry (HCSM) with a Health Savings Account (HSA). Citizens would have the ability to choose between participation in a HCSM or the purchase of a high-deductible health insurance plan. **Senator Nuxoll** asked the Committee to refer this RS to the Senate State Affairs Committee for printing.

UNANIMOUS CONSENT REQUEST: **Senator Cameron** asked for unanimous consent to send **RS 23614** to the Senate State Affairs Committee for printing and return to the Committee at the discretion of the President Pro-Tem. There were no objections.

H 137AA **Public Employee Retirement System of Idaho (PERSI) - Deputy Sheriffs and Police Officers.** **Michael Kane**, Attorney, representing the Idaho Sheriff's Association, said this bill was an amendment to provide that certain deputy sheriffs and city police officers who act in a supervisory capacity shall not lose their police officer status and to make technical corrections.

Mr. Kane said the purpose of this bill is to ensure that peace officers who are promoted to perform supervisory duties do not lose police officer status for purposes of retirement calculations performed by PERSI. The Rule of 80 is designed to apply to first responders so they are eligible to retire somewhat earlier than many other governmental employees, due to the physical demands of the job. **Mr. Kane** explained there is a point where performing the basic tasks can be physically dangerous. This bill does not seek to change that concept. Rather, it is designed to clear up a vague term in the law, defining who is and who is not in the Rule of 80. For many years the term has included the generality "active law enforcement service." This unclear term has led to occasional anomalies, resulting in officers who have been promoted to supervisory duties not being considered "active" in the same sense as a road officer, and thereby losing the Rule of 80 police officer status. This can act as a disincentive for an officer to accept a promotion.

Mr. Kane explained this bill clarifies that one who holds a current peace officer certificate and is promoted or hired to fulfill a supervisory role does not lose Rule of

80 status. The primary reason for this is that supervisors are often called upon to make arrests, engage in searches, or engage in other similar physical tasks, just as the officers they supervise.

There is no impact on the General Fund. At the Idaho State Police (ISP) all of the command staff is in the Rule of 80. There is no impact on the PERSI Fund as peace officers pay more into the fund than other employees in order to fund retirement under the Rule of 80. The PERSI Director is not opposed to this bill.

Senator Cameron asked **Mr. Kane** to explain what was changed in the bill. **Mr. Kane** said that on page 2, lines 8 and 25, the term "peace officer" was changed to "police officer." **Mr. Kane** explained that "police officer status" is a term that is mentioned in the title of this section of the code. **Senator Cameron** referred to line 21 and wanted to know why the term "peace officer" was not being amended in this section of the bill. **Mr. Kane** explained that in the earlier part of the amendment, "peace officer certificates" is used; whereas, in another part of the amendment, "police officer status" is a special term that is addressed in the code section. **Senator Cameron** and **Mr. Kane** talked about the possibility of an officer being promoted and considered to have a loss of status. **Senator Cameron** wanted to know if this bill would possibly protect an officer who had a loss of status. **Mr. Kane** gave the example of an officer who is wearing a badge and carrying a gun, who is still expected to go out on a search warrant. As long as the officer is not in some of the special categories, they will stay in the Rule of 80.

Senator Schmidt referred to page 2, lines 6 and 23, and said he was concerned whether disqualification through disability was simultaneous. **Mr. Kane** said if an officer is temporarily or permanently disabled and is on light duty or certified as not fit for duty, they would not fall under the Rule of 80 but would instead be under the Rule of 90. He said most agencies do not have the luxury of putting people on lifetime light duty. **Senator Schmidt** asked if disability and promotion can be considered independent of one another. **Mr. Kane** replied, "yes." **Senator Martin** wanted to know if the bill included or excluded anyone in the workforce. **Mr. Kane** stated there were a couple of examples at the county level and one is currently pending with the PERSI Board.

MOTION:

Senator Schmidt moved to send **H 137aa** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor.

H 99:

Chartered Banks. **Gavin Gee**, Director, Department of Finance (Department), said this bill repealed certain sections of Idaho Code and amended other sections. **Director Gee** went over all of the proposed changes. He said **H 99** contains amendments to the Idaho Bank Act, which was originally passed 110 years ago in 1905, and much of that law still exists today and forms the basis for current law. The banking industry is one of the heaviest regulated industries in the United States (U.S.) today because of long-standing public policy centered around protecting the over \$11.5 trillion of U.S. depositors' money. In Idaho, that protection is for the approximately \$21 billion of bank deposits (\$4.5 billion in community banks).

Director Gee said accordingly, the central theme of bank regulation is focused on having safe and sound banks in order to instill confidence in the banking industry, knowing deposits are absolutely safe and available to withdraw today, tomorrow, next month, next year, 20 years from now or whenever. Since 2008 the banking industry has been under significant stress with the Great Recession and the financial crisis which has resulted in nearly 500 bank failures nationally and 2 failures in Idaho (2009 and 2014). **Director Gee** said that moreover, during this period, bank regulators were working hard to rescue more than half of the community banks that were troubled. While one state chartered bank was lost, the great news is that all the other troubled banks survived or merged and today there are no Idaho-based banks under formal regulatory enforcement actions. He stated that as state regulators, the greatest success is helping troubled banks to not fail and have them restored to financial health.

Director Gee said there is a unique regulatory structure in this country called the dual banking system whereby banks can choose to operate with a state or federal charter with a primary state or federal regulator. For example, in Idaho since 1979, 20 new banks chose a state charter and 1 bank chose a federal charter. A healthy bank can change its charter at any time. Since 1997 16 federally chartered banks converted to a state charter and 2 state chartered banks converted to a federal charter. **Director Gee** stated this is very important to understand because every day state bank regulators must compete for charters with much larger, much better funded and more powerful federal chartering agencies.

Director Gee pointed out **H 99** is essential for two reasons. First, according to current community bank outreach and initiatives to support community banks, some regulatory burden relief is proposed in state law based on feedback received from Idaho community bank Chief Executive Officers (CEO) and the Board of the Idaho Community Bankers Association. While most regulation of the banks is federal and tied to Federal Deposit Insurance Corporation (FDIC) requirements and federal consumer protection laws, there are provisions in this bill to provide some regulatory relief at the state level which will result in some cost savings to community banks.

Second, accreditation is critically important to the Department's credibility and relationships with state and federal bank regulators, policy makers, the banking industry, staff and others. Every five years, the Department must undergo a thorough on-site audit by the accreditation authority. The audit will take place this year. In addition, off-site follow-up and self-evaluation is required every year. Among the accreditation program standards are requirements that each state banking department update its state law to conform with federal requirements and update its enforcement authority to match other high national standards. **Director Gee** said it is important to note all of the added regulatory authority granted to the Department in this bill is due to accreditation standards. This authority already exists at the federal level and in most states.

Finally and importantly, **Director Gee** emphasized that the Department has worked very closely for several months with the banking industry on this bill, with multiple meetings with the Idaho Bankers Association, Dawn Justice, Trent Wright, Mike Brassey and others. The industry supports the bill and the Department is not aware of any opposition.

TESTIMONY:

Mary Hughes, Bureau Chief, Financial Institutions Bureau (Bureau), said Section 1 lists 11 of the current sections of the bill proposed to be repealed because they will be obsolete or conflict with amended provisions; in total 16 sections will be repealed. In the definitions sections of the bill, the reference to "banking facility" as a defined term will be eliminated as it is obsolete. Instead the bill will refer to loan production offices, mobile or temporary facilities. The terms "home state" and "host state" are common terms in the banking industry and refer to banks chartered in one state but doing business in another state. "Mobile or temporary facilities" are defined as places of business for a bank for limited activities for limited periods of time. An obsolete prohibition will be deleted for an Idaho bank being acquired by another bank unless it was in business for five years.

The requirement that banks hold shareholder meetings only in certain months will be deleted and instead will allow the meetings as determined in a bank's bylaws.

The requirement that banks file stock transfer reports with the Department will be eliminated. Currently, banks are required to do so within 20 days of any transfer of stock. Currently, banks are required to obtain approval if 7 percent of outstanding stock is transferred. The bill will change the requirement so that approval is needed if, after the transfer, the person acquiring stock will own or control 10 percent or more of the bank's stock. This will be consistent with change of control requirements of federal bank regulators.

The status of the law is clarified regarding interstate branching. An Idaho bank may branch with the approval of the Department. If branching into another state, the bank must meet the requirements of that state's law and federal law. Similar requirements apply to banks chartered in other states that want to branch into Idaho.

A new section has been added defining loan production offices. These are offices that solicit loans, but cannot accept deposits or disburse loan proceeds like a bank branch. The bill will require banks to provide notice to the Department before establishing a loan production office in Idaho. **Ms. Hughes** referred to Sections 9, 10 and 11 on page 9. She said these sections together relate to loan production offices, mobile and temporary facilities. The sections clarify that these are not branches. Any bank with a loan production office, mobile or temporary facility is responsible for keeping books and records for all transactions at those locations. Because a primary use for mobile and temporary facilities would be an emergency, the requirement of regulations to govern their use, and the restriction that they be operated only in communities where there is no bank, are eliminated.

Banks will be allowed to determine the market value of foreclosed property by an evaluation, instead of an appraisal, when the bank's investment in the property is less than \$250,000.

Language has been deleted which refers to the Department's ability to charge banks from other states an annual fee, and this authority has been eliminated by federal law. The Department will be allowed to charge banks for the review of certain applications, limited to the Department's costs of review. The Department will be authorized to enter into fee sharing agreements with other states that have banks operating in Idaho.

The Department will be allowed enforcement authority to meet accreditation standards. Many of these responsibilities are already in the bill, but the amendments restructure and enhance them for accreditation purposes. The Department will be authorized to order the suspension or removal of a bank director, officer, or employee upon certain findings. If removed, the person is prohibited from again

becoming employed by a bank in Idaho unless permitted by the Department.

The Department must comply with the Administrative Procedures Act. Changes will authorize the Department to issue cease and desist orders for unsafe or unsound practices, violations of law, rule, order, condition or agreement, and assess civil money penalties. The Department will be authorized to bring an action in court based on unsafe or unsound practices, violations of law, rule or order; seek injunction, other remedies, and penalties. The Department will also be authorized to determine whether the use of the word "bank" in a corporate name is misleading or deceptive so as to cause harm to the public. The unauthorized use of the word is already defined as a felony in the bill. The changes in this section will allow the Director to grant a waiver to allow its use in certain circumstances.

The remainder of the bill contains necessary revisions so that Idaho's interstate branching laws will be consistent with federal law. Federal law now provides that banks may branch into other states if approved to do so by their primary federal regulator, if notice is provided to the state regulator, and if the bank has registered with the Secretary of State. Idaho banks that want to branch into other states will also need the approval of the Department. The changes in the bill will open up the branching process and remove barriers.

The Department has worked with the Idaho Bankers Association (Association) on this bill and the Association supports the bill. The Department is not aware of any opposition to the proposal.

Chairman Tippets referred to page 15 and wanted to know if Ms. Hughes could give an example of when a director has the authority to issue a waiver. **Ms. Hughes** said waivers were quite common. For example, a company or group could use the word "bank" in their name, such as a food bank or bank of pizza, which could qualify for a waiver. **Ms. Hughes** said the Bureau always checks with the Secretary of the State for advice prior to issuing a waiver.

Senator Schmidt and **Ms. Hughes** discussed the change on page 7 relating to the time period of the annual meeting as determined by the bank's bylaws. They also talked about the nature of the original prescription of months (January through April), which was initially put into place so as not to delay the annual meeting.

MOTION:

Senator Cameron moved to send **H 99** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 117:

Relating to Occupational License Renewal of Licenses or Registration.

Maurice Ellsworth, Counsel, Bureau of Occupational Licenses (Bureau), said this bill amended Idaho Code adding a new section to provide that certain licenses or registrations be subject to annual renewal and reinstatement requirements.

Mr. Ellsworth said **H 117** is brought on behalf of the Bureau. He said the Bureau contracts with 29 self-governing boards and commissions to provide administrative, fiscal, investigative and legal services. He said this bill repeals and replaces the existing provision which governs the procedure for renewal, reinstatement, and re-licensure or re-registration by individuals or entities licensed or registered by boards or commissions served by the Bureau. Outdated language is removed and the existing statute is revised to make it easier to understand and comply with by organizing it into several operative subsections arranged in a more logical sequence. Currently, if a license or registration expired and was not renewed, reinstatement requires renewal fees to be paid for each year the license or registration was expired. This bill eliminates the requirement for payment of back renewal fees and raises the reinstatement fee from \$25 to \$35. The current

requirement to pay multiple prior years' fees has been a barrier for some who wish to be reinstated.

Mr. Ellsworth said the bill clarifies a requirement for renewal or reinstatement that a licensee or registrant be in compliance with the legal renewal requirements of the relevant board and with any financial obligation to or payment arrangement with the board. The application process and the requirements to obtain a license or registration are also clarified. Currently the law states the Bureau is to examine the person's qualifications. The board determines qualifications for licensure and also provides the relevant board flexibility to assure the individual's current competence to practice. This bill clarifies and simplifies the process of license and registration renewal, reinstatement and re-licensure or re-registration.

The following associations support the bill: Idaho Counseling Association, Idaho Psychology Association and the Idaho Rural Water Association. The Bureau is unaware of any opposition to this bill.

Chairman Tippets remarked there was no grace period for renewals and wanted to know if any groups had a grace period that is being eliminated. **Mr. Ellsworth** said an applicant has five years to renew their license or registration. The bill provides the applicant can renew up to six weeks prior to the expiration date. All applicants are notified ahead of time.

Senator Schmidt referred to the last line of the bill, "persons who fulfill the conditions and requirements of this subsection shall be issued a new license or registration," and wanted to know if there are other professions who have a stricter requirement. **Mr. Ellsworth** said the existing language was being preserved from the current law. The applicant will have to meet the current requirements for licensure.

MOTION:

Senator Martin moved to send **H 117** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor.

H 116:

Relating to the Bureau of Occupational Licenses Assessment of Costs and Fees. **Maurie Ellsworth**, Counsel, Bureau of Occupational Licenses (Bureau), said this bill revised the list of agencies to which the Bureau provides services and provides that such agencies may assess costs, fees and attorney fees incurred in investigations and prosecutions and declaring an emergency.

Mr. Ellsworth stated this bill does not create or add any new boards or commissions. The current act does not list all boards and commissions the Legislature has authorized the Bureau to serve. This bill adds the names of those currently served to the bill.

Mr. Ellsworth said this bill also clarifies the authority of boards and commissions served by the Bureau to assess and collect attorney fees incurred in the investigation and prosecution of violations of their laws and rules. This bill is needed because a 2014 decision of the Idaho Supreme Court held that existing language in the Bureau statute which allows "boards to recover costs and fees incurred in the investigation and prosecution of violations" is inadequate because it does not specifically say "attorney fees" like the language in statutes of the Real Estate Commission, Board of Medicine and some other boards.

Boards and commissions are charged with public protection. They self-regulate their respective industries and rely on licensure fees for their operations. They receive no General Fund money. To remain self-supporting, a board or commission's only alternative will be to raise licensure or registration fees for all

licensees and registrants if they are unable to recoup costs and fees from those found to have violated their laws and rules. This bill will help keep licensure and registration fees down.

The following associations support the bill: Idaho Building Contractors Association, Idaho Chapter American Institute of Architects, Idaho Midwifery Council, Idaho Occupational Therapy Association, Idaho Psychology Association, Idaho Rural Water Association, Idaho Chapter of the National Association of Social Workers, Idaho Professional Beauty Association and the State Relations Representative for the American Cosmetologists Association. The Bureau is not aware of any opposition to this bill.

Chairman Tippetts and **Mr. Ellsworth** discussed the recovery of attorney fees as clarified by the Idaho Supreme Court.

Senator Martin referred to page 2, line 6, relating to licensing versus registering an applicant. **Mr. Ellsworth** said there are some boards who register applicants rather than license them. An applicant does not register to become licensed.

Senator Heider referred page 1, line 24, and wanted to know whether naturopathic medical examiners were registered or licensed. **Mr. Ellsworth** said the Bureau no longer contracts with that group and he was not sure if they were still operative. **Tana Cory**, Bureau Chief, said there had not been a contract with naturopathic medical examiners since 2007.

TESTIMONY: **Tyler Mallard**, Government Affairs Liaison with Risch Pisca and representing Idaho contractors, testified in support of this bill. He said the contractors rely on the Bureau, which has provided outstanding service.

Senator Schmidt, Mr. Ellsworth and **Ms. Cory** discussed updating the statute in the future to remove the Board of Naturopathic Contractors from legislation.

MOTION: **Senator Heider** moved to send **H 116** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Lee will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:30 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 19, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of March 10, 2015	Senator Cameron
MINUTES APPROVAL	Minutes of March 12, 2015	Senator Martin
GUBERNATORIAL APPOINTMENT	Celia Gould, PERSI Board	Celia Gould
GUBERNATORIAL APPOINTMENT	Rod Higgins, State Insurance Fund Board	Rod Higgins
GUBERNATORIAL APPOINTMENT	Max Black, State Insurance Fund Board	Max Black
<u>H 179</u>	Investment Limitations for Hospital District Treasurers	Jeremy Pisca, Kootenai Health Medical Center
<u>H 238</u>	Electrical Contractors - Equipment Exemption	Representative Batt Sheri Johnson, Southwest Idaho Manufacturer's Alliance

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 19, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Cameron** moved to approve the Minutes of March 10, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of March 12, 2015. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT AND
HEARING:** The appointment of Celia Gould of Boise, Idaho, to the Public Employee Retirement System of Idaho (PERSI) Board (Board), term commencing March 11, 2015, and expiring on July 1, 2018. **Ms. Gould** said she had served on the House Judiciary and Rules Committee, and she owns and operates a family ranch in Buhl. For the last eight years, she has served as the Director of the Idaho State Department of Agriculture Board (ISDA). One of her greatest accomplishments was leading ISDA through the Great Recession. She said public employees are the greatest assets to the State, and she is looking forward to serving on the PERSI Board. **Senator Cameron** stated that Ms. Gould was a great servant to the State.

**GUBERNATORIAL
APPOINTMENT:** **Senator Cameron** moved to send the gubernatorial appointment of Celia Gould to the PERSI Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the appointment on the floor.

**GUBERNATORIAL
APPOINTMENT AND
HEARING:** The appointment of Rod Higgins of Boise, Idaho, to the State Insurance Fund Board (Board), term commencing April 3, 2014 and expiring April 3, 2018. **Mr. Higgins** said he was a licensed insurance agent and a graduate of Boise State University. He said he believes what the Board has done with the general fund is commendable.

Senator Cameron remarked that Mr. Higgins has done a fantastic job. He asked Mr. Higgins how he would handle any potential conflicts or did he perceive any conflicts. **Mr. Higgins** said conflicts were not a problem. He stated he sells insurance for the State Fund and for other independent carriers and this has not been an issue.

GUBERNATORIAL APPOINTMENT:

Senator Cameron moved to send the gubernatorial appointment of Rod Higgins to the State Insurance Fund Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Hagedorn will carry the appointment on the floor.

H 179:

Investment Limitations for Hospital District Treasurers. **Emily Patchin**, representing Kootenai Health Medical Center, speaking on behalf of Jeremy Pisca, said this bill provides investment opportunities for the treasurer of a hospital district or county hospital to invest idle funds. The investment will be limited to investments that carry an "A" rating or better by a commonly known rating service and that are authorized by the Legislature for the State Treasurer. This gives hospitals the ability to diversify their investments, thus keeping their reserves safe from interest rate risk.

Senator Martin and **Ms. Patchin** had a conversation about investing funds in the same manner as the State Treasurer. **Chairman Tippets** clarified with Ms. Patchin that this bill is giving the treasurers greater investment options. He asked her to give examples of the kinds of investments that would be allowed with the passage of this bill. **Ms. Patchin** deferred to Kim Webb, Chief Executive Officer (CEO), Kootenai Health. **Ms. Webb** said hospitals are generally limited to United States (U.S.) Treasury and government-related bonds and agency mortgage-backed securities. Recently, the fund returns have been extraordinarily low because of interest rate risk. She said the banks would like to have the same options as the State Treasurer, which primarily provide the opportunity to invest in prime commercial paper bonds, notes of corporations in the U.S. that have an "A" rating or higher. **Chairman Tippets** asked Ms. Webb if she could give a brief assessment of comparative risk between the types of allowable investments and the other group of investments that would be allowed. **Ms. Webb** said with treasuries and municipalities there is probably a different type of risk, which is interest rate risk. She said with high-rated corporate bonds there is a credit risk. When interest rate risk is a little higher the bank can diversify, which provides a safety net.

TESTIMONY:

Senator Cameron wanted to know if there were restrictions for privately-owned hospitals. **Ms. Webb** said there were no restrictions on privately-owned or not-for-profit hospitals. They can invest in equities and mutual funds. **Senator Cameron** pointed out that a county-owned hospital is overseen and has the backing of the county. He wanted to know if the county treasurer invests idle funds with the State Treasurer in the Idaho Pool Fund would this allow the local county hospital to invest in a similar type investment structure. **Ms. Webb** said that was correct.

Senator Heider said he was concerned about what types of return on investments the banks are receiving now. **Ms. Webb** said in 2012 and 2013, the banks had approximately a 1 to 2 percent loss on investments. Currently, there is a 2 percent income, which potentially provides for a higher rate of interest and a better opportunity to safeguard bank funds. Higher-rated bonds rarely default which allows the banks to diversify.

Senator Schmidt wanted to know how many were district hospitals. **Ms. Webb** said she thought there were approximately nine. **Senator Schmidt** wanted to know if Ms. Webb had spoken with other treasurers in other districts. **Ms. Webb** stated Kootenai Health has worked through the Idaho Hospital Association. **Senator Schmidt** said he had a concern about burdening a treasurer in a small hospital district who does not have the

capability of investing. **Ms. Webb** said treasurers in small hospital districts do not have to utilize this opportunity if they do not feel comfortable. She said Kootenai was the largest hospital district in the State, and they have the ability to have financial advisors to help with financial decisions.

Senator Lee referred to line 34 of the bill and wanted to know if idle moneys were in a savings account or invested. **Ms. Webb** said according to her research, the treasurers of hospital entities are required to be prudent investors making appropriate investments with some restrictions. **Chairman Tippetts** said there was a potential concern that a requirement may be imposed on treasurers that is not current practice. He wanted to know if currently there is a statutory requirement that it is the treasurer's responsibility to invest funds, or is this legislation potentially taking away the opportunity for someone other than the treasurer to have that responsibility. **Jeremy Pisca**, representing Kootenai Health, said the prudent investor standard is a common law standard that is imposed upon a treasurer. The treasurer also has a fiduciary duty as the treasurer of an organization. The language in the bill is redundant.

Senator Martin asked Mr. Pisca if the recommendations by the State Treasury Investment Board to change how money is invested would be for the treasurer or for the Legislature. He wanted to know if Mr. Pisca was aware of the investment structure, and would the bill have an effect on the structure. **Mr. Pisca** said he was not aware of the effect on the structure and referred to line 38. He referred to Idaho Code §§ 67-1210 and 67-1210a, which directly tie the investment of idle money to the statute and allows the state treasurer some options.

MOTION:

Senator Cameron moved to send **H 179** to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Tippetts will carry the bill on the floor.

H 238:

Electrical Contractors - Equipment Exemption. Representative Batt said she worked with the Southwest Idaho Manufacturer's Alliance (SWI-MA), relating to manufactured industrial equipment. This bill will specifically exempt industrial equipment from being listed by a nationally recognized testing laboratory. She said Idaho's current requirement for the listing of industrial equipment is inconsistent with the National Electrical Code (NEC) and should not be required. **Representative Batt** said the listing requirement places an undue burden on Idaho's manufacturers and is hurting the manufacturing economy. The public is not allowed around these machines and only well-trained people operate these industrial machines.

TESTIMONY:

Sheri Johnson, Board President, SWI-MA, testified in support of the bill. She said she owns and operates a manufacturing business that utilizes industrial equipment. She said her company obtained Underwriters Laboratories (UL) certification. A Nationally Recognized Testing Laboratory (NRTL) is an Occupational Safety and Health Administration (OSHA) designation given to testing facilities that provide product safety testing and certification services to manufacturers. The intent is for manufacturers to certify their products and offer that certification as a benefit to their customers. These types of certifications are intended for the original equipment manufacturer, not the consumer utilizing the product. **Ms. Johnson** said unique equipment often has to be imported. Other countries often use different certification standards, but not necessarily unsafe ones. Oftentimes, this equipment is engineered and built by a limited number of manufacturers. It is in the manufacturer's best interest, as well as business owners, to buy appropriate equipment from proven companies.

Ms. Johnson stated that as manufacturers, safety is of utmost concern; however, this is not a safety issue. The code does not address equipment that is plugged in, only equipment that is hard-wired. Businesses in Idaho have been crippled due to excessive and unnecessary regulation costs, which cost time and money, negatively impact expansion, productivity and the creation of jobs without adding any safety benefit.

Chairman Tippetts wanted to know why this problem was just now coming forward as he did not recall there being a problem in the past. **Ms. Johnson** said the matter was brought to SWI-MA due to an inconsistent interpretation of the law relating to industrial equipment.

Senator Schmidt stated that he understood Ms. Johnson's company manufactures chillers that are UL certified. **Ms. Johnson** said she wanted the Committee to become familiar with the UL process and the intent of original equipment manufacturers, called Original Equipment Manufacturers (OEM) of chillers. The intent is to certify the equipment at the time of manufacture, and not for the buyer of the equipment to have to obtain a UL certification. **Senator Schmidt** said he understood from the legislation the manufacturer wanted to be able to buy and install non-UL approved equipment.

TESTIMONY:

Bob Scott, Board Member, National Electrical Association (Board), gave a brief background of his qualifications and spoke in opposition to the bill. He stated Rekluse Motor Sports called attention to the problem of it being too costly to obtain some of the pieces of equipment listed by UL or NRTL. The Board directed members of the Division of Building Safety (DBS) to collaborate with Rekluse Motors for a solution. An alternative would be to certify equipment by NRTL and allow a licensed electrical engineer, not employed by the company wanting the certification, to certify that a piece of equipment was safe to use. The legislation passed last year, and he did not think enough time had elapsed to see whether the problem was solved. Rekluse Motor Sports told the Board they were not happy and they were going to bring a similar bill to the Legislature. He said he felt the Board did not support this legislation. When requirements are removed for a piece of equipment to meet a certain standard, safety could be compromised. He said he did not know how to calculate the fiscal impact due to accidents that kill workers. OSHA requires industrial equipment to be certified.

Vice Chairman Patrick said he was curious about what kinds of electrical problems could happen when a circuit breaker or other safety equipment is in place and functioning. **Mr. Scott** said the equipment has to be certified by the manufacturer. Without requirements, there is nothing preventing the manufacturer from using inferior products or cutting corners. **Vice Chairman Patrick** said a circuit breaker could trip if a small wire was used in the equipment, which would make it too hot. **Mr. Scott** said the resistance that comes from a bad connection or a smaller wire does not trip a breaker as there must be a special breaker in order for it to trip.

Senator Martin asked for clarification on what is happening now in the industry. **Senator Martin** and **Mr. Scott** talked about a manufacturer purchasing a piece of equipment that is not UL approved and attaching the equipment to an existing piece of machinery. **Mr. Scott** said an electrical engineer or the listing laboratory has to certify the product, which is expensive. Most people try to buy a piece of equipment from a

manufacturer that is approved. **Senator Martin** asked about the cost of certification. **Mr. Scott** said the cost was approximately \$5,000.

Senator Lakey wanted to know why there was inconsistency in the application of enforcement. **Mr. Scott** said he thought each city interprets the electrical code differently. **Senator Lakey** wanted to know why testing by foreign agencies was not acceptable. **Mr. Scott** said he was not familiar with foreign agency certification requirements, but he knows that many of the foreign manufacturers do manufacture to UL standards.

Senator Ward-Engelking stated that some of the purchased equipment does not have UL certification and has to be recertified. She was wondering if some of the equipment from China, for example, met UL standards. **Mr. Scott** said China is one of the major suppliers that does not use a certification by a nationally recognized testing laboratory. **Senator Ward-Engelking** expressed a concern since other things, such as toys, have not met U.S. standards.

Senator Lee said she was familiar with policies from other states and they do not have the same requirement. **Senator Lee** wanted to know if Mr. Scott was familiar with any of the safety issues or items that happened in other states. **Mr. Scott** said he had no specific instances.

TESTIMONY:

Marty Durand, representing the Idaho Building Trades Council, testified in opposition to the bill. She said this bill would allow some industrial electrical equipment to go without a certification, which is a safety issue. Certification is necessary to ensure the equipment is properly manufactured, labeled and can be operated safely. This bill presumes the equipment is safe.

Mark Zaleski, Business Manager of the International Brotherhood of Electrical Workers (IBEW), spoke in opposition to the bill. He said removing certification requirements for products and equipment throws safeguards out the door and opens the door to installations of inferior equipment. There is an unknown in the area of safety for both the installers and individuals who may come into contact with those products. The listing of equipment has been an industry standard and a proven method that works for customers who are installing products in their facilities. This bill gives the Board the right to make a determination of whether a product or piece of equipment presents an undue hazard to life or property.

Senator Heider wanted to know why Mr. Zalski referred to some products from out of the country as being inferior, even though there was not a UL certification. **Senator Heider** stated that many pieces of equipment made overseas were excellent. **Mr. Zaleski** said he agreed there were many superior products, but he said he was alluding to the possibility of an inferior product in his prior statement.

Jeff Fitzlaff, representing Underwriting Laboratories, said he was here to answer any questions pertaining to UL. **Chairman Tippetts** said he does not remember at his place of employment this ever being a problem with electrical equipment purchased from an industrial facility, and this appears to be a more recent problem. He wanted to know why this has become a problem. **Mr. Fitzlaff** said there was not a problem in earlier years. The European machinery is usually built with the Deutsches Industrial Norm (DIN) standard with a self-certification signed by the manufacturer. The European and Chinese electrical systems are not as robust as the U.S. systems, so the conductors are much smaller. Distribution panels are manufactured to protect the equipment, but in the U.S. the conductors are

protected at the point of manufacture of the equipment. The Conformance European (CE) mark has notoriety. The UL mark is a self-certification showing that the U.S. standard is a true third party representing all manufacturers.

Chairman Tippetts wanted to know whether OSHA required industrial equipment to be certified and whether the action on this bill would make a difference or was it shifting the responsibility from the State to the federal government for enforcement. **Mr. Fitzlaff** said OSHA requires equipment to be labeled and listed.

Senator Schmidt wanted to know if Mr. Fitzlaff was aware of any inspections that have been done to satisfy the law passed last year which allowed state inspection of non-UL approved installed equipment. **Mr. Fitzlaff** said he does not know of any electrical engineers who have performed these inspections.

Senator Lakey asked Mr. Fitzlaff to give him the Code of Federal Regulations (CFR) citation. **Mr. Fitzlaff** said it is 29 C.F.R. 1910.303(2)(b). **Senator Lakey** wanted to know if that was the National Electric Code (NEC). **Mr. Fitzlaff** said that was not the NEC, but a federal code used by OSHA.

Vice Chairman Patrick and **Mr. Fitzlaff** discussed "labeled and listed" as the terms relate to the NRTL list.

Aaron White, representing the Idaho American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), testified in opposition to the bill. He said when a piece of equipment was deemed unsafe, the company can continue to operate the equipment until the DBS Board meets and officially rules the equipment to be unsafe. This process can take up to three months. The only way to ensure a piece of equipment is safe is to have it tested.

Dwayne Dayley, Rekluse Motor Sports, testified in support of the bill. He said the bill is strictly related to electrical use of industrial equipment. The intent is to exempt industrial equipment from inspection by an industrial engineer. He said he wanted to see a standard interpretation of the law. The intent was not to create a fiscal burden on the DBS nor remove inspection of equipment. Safety is a top priority. He said some equipment is being plugged in to avoid compliance with the law. Some companies are not taking out permits to install equipment. The bill allows DBS to stop someone from not following the law. The typical cost is between \$5,000 to \$8,000 for an inspection.

Senator Lakey wanted to know if the bill passed, what would the inspection requirements be for a new piece of industrial equipment. **Mr. Dayley** explained the process, which included the appropriate labeling by OSHA. After the equipment is wired into the machinery, the electrical inspector looks at the wiring and inspects the breakers and other items to make sure the company is in compliance.

MOTION:

Senator Heider moved to send **H 238** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Kelly Pearce, DBS Administrator, said the DBS was comfortable with the compromise from the last Session. Not enough time has passed; he said it was important the DBS retains some sort of role regarding safety. He stated that enforcement varies throughout the State.

Senator Ward-Engelking said she was concerned about electricians being opposed to this bill, and it seemed to her that the experts in the field were concerned about the change in the law.

The motion carried by **voice vote**. Senators **Ward-Engelking, Schmidt and Martin** requested to be recorded as voting nay. Senator Lakey will carry the bill on the floor.

**GUBERNATORIAL
APPOINTMENT AND
HEARING:**

The appointment of Max Black of Boise, Idaho, to the State Insurance Fund Board (Board), term commencing April 3, 2014 and expiring April 3, 2018. **Mr. Black** stated he was a former Representative and served for 20 years. He said he spent his working career in the insurance industry. **Senator Martin** thanked Mr. Black for his service, help and advice.

**GUBERNATORIAL
APPOINTMENT:**

Senator Martin moved to send the gubernatorial appointment of Max Black to the State Insurance Fund Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Burgoyne will carry the appointment on the floor.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 2:58 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Tuesday, March 24, 2015

SUBJECT	DESCRIPTION	PRESENTER
	NOTE: MEETING STARTS AT 1:00 P.M.	
<u>S 1168</u>	Relating to Finance	Senator Cameron
<u>SCR 125</u>	Relating to Health Care Sharing Ministries	Senator Nuxoll
<u>DOCKET NO. 38-0501-1401</u>	Rules of the Division of Purchasing	Sarah Hilderbrand, State Purchasing Manager
<u>H 152</u>	Bureau of Occupational Licenses - Licensure of Sign Language Interpreters	Representative Packer

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 24, 2015

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippets** called the meeting to order at 1:30 p.m. and welcomed all.

S 1168: **Relating to Finance. Senator Cameron** said this bill permanently reduces the premium tax rate for workers' compensation insurance premiums that flow to the Industrial Commission (Commission) from 2.5 percent to 2 percent. **Senator Cameron** stated the Commission, working together with the Joint Finance-Appropriations Committee (JFAC), found there was an excessive amount of money in the reserve accounts. A process ensued in which the Commission recommended a temporary reduction in the premium tax from 2.5 percent to 2 percent. However, there was a sunset clause after two years. In 2013 the Commission came before the Legislature and proposed that the sunset clause be extended another two years, which was done. The current premium tax remains at 2 percent. The bill permanently leaves the premium tax at 2 percent. **Senator Cameron** referred to page 2 of the bill outlining a cash analysis of the Commission's current operations as well as what the operations would be in the event this bill were to pass. The Commission is one of the few agencies that has the opportunity to invest excess funds in long-term investments. In both cases, the reserves at the end of 2018 in the long-term investment account would be at \$11.5 million plus whatever else is in the operation capital.

Senator Cameron stated that at a meeting with Mr. Limbaugh, Commissioner, and Chairman Tippets, there was a concern expressed about the long-term viability. It was decided that a more conservative, more cautious approach would be to extend the sunset for five years, rather than an ongoing situation. **Senator Cameron** referred to the last page (see attachment 1) as an alternative. He said he was supportive of sending **S 1168** to the Amending Order with a sunset clause after five years, if that is the desire of the Committee.

Senator Schmidt said he was wondering about the risks and benefits of the amendment. **Senator Cameron** said there was a comment made that the Legislature would not have to act this year. But he thought it would be inappropriate if a change was not made for employers who are paying workers' compensation premiums and would potentially pay a higher premium tax. He said he realized that next year a retroactive to the January 1 emergency clause could be enacted, but employers would have been billed based on a 2.5 percent premium tax. The benefit of not amending the premium tax is timing. **Senator Cameron** said he was confident that the Commission will be able to manage under current levels at 2 percent. The Commission, however, has some reservations, so the benefit of amending the bill would be the ability to examine the tax for five years. A decision

could be made to allow the sunset clause to expire if revenue was declining, or the clause could be addressed and further extended. Due to prior history, the Commission is cautious about trying to avoid raising premium taxes in the future.

MOTION: **Senator Heider** moved to send **S 1168** to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion.

Senator Heider commented he thought in the future another bill could be brought forward to increase or decrease the premium tax.

The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor.

SCR 125: **Relating to Health Care Sharing Ministries.** **Senator Nuxoll** said this resolution urges Congress to provide another option for citizens to access medical care and reduce costs by allowing a Health Care Sharing Ministry (HCSM) with a Health Savings Account (HSA).

Senator Nuxoll said HCSMs are charitable organizations that cater to people of similar faith who choose to help each other pay their medical bills. Their ministry is based on the biblical belief of personal responsibility, and may be called upon to share one another's medical financial burdens when they are greater than they can bear. HCSM participants retain possession of their money until it is needed by another participant for health care costs. Instead of premiums, "shares" are assigned to each HCSM participant. Every month, participants send their shares (checks), which are financial gifts to help pay for medical bills, to another participant who has a qualified medical need. The organization itself is a facilitator of the contributions among the participants who have financial or medical needs.

HCSMs act as a clearinghouse of information at each ministry's central office. The central offices coordinate monthly giving and publish the needs via a newsletter, household-to-household, family-to-family, in order that all needs are met through this community approach. Congress recognized HCSMs as legitimate and exempts the participants from the individual responsibility requirement in the Affordable Care Act (ACA). This means that participants in HCSMs are not required to purchase health insurance, nor will they be fined or penalized for not purchasing health insurance. Participants know that they will not be breaking the law of the ACA.

Senator Nuxoll stated the names of these ministries are Samaritan Ministries, Medi-Share, and Christian Health Care Ministries. In 2013, there were approximately 800 households in Idaho participating in HCSMs, which equates to approximately 2,500 individuals. They have increased exponentially since 2013. Nationally, HCSMs involve a community of approximately 350,000 Christians in all 50 states who share the cost of their medical events without insurance.

Senator Nuxoll explained why someone would want to participate. She said Christians choose to participate in an HCSM for two main reasons. One reason is they desire to choose health care solutions consistent with their beliefs or ethics. Many insurance companies pay for procedures that are considered morally objectionable. Secondly, many HCSM participants have often been priced out of the conventional insurance market or simply cannot afford an insurance plan that continues to rise at a rate exceeding that of inflation. **Senator Nuxoll** cited some other reasons. Namely, these ministries can also be used as a supplement for Medicare. There are programs to help members with the costs or pre-existing conditions, and membership is not cancelled because of a costly condition.

Senator Nuxoll explained shares for a family range from around \$345 to \$524 per month. She cited examples of HCSMs being used to replace high deductible

insurance. She said Samaritan Ministry charges one administrative fee per year with payments of \$405 per month for a family of four. Shares can increase or decrease. The maximum limit is \$250,000 per event. Participants must pay the first \$300 on claims. Christian Health Care Sharing Ministry for a family of six charges one administrative fee of \$100 and \$40 per year thereafter, with payments of \$470 per month with a payment of \$500 per claim and no cap per incident. **Senator Nuxoll** said they will cover pre-existing conditions for \$15,000 for the first year, \$25,000 the second year and \$40,000 the third year. Expenses are totally covered after the third year.

Senator Nuxoll explained HCSMs have been looking for ways to strengthen their place in the market. One way is to allow participation in an HCSM as an alternative to a High-Deductible Health Plan (HDHP) when opening an HSA. She explained that an HSA is a type of personal savings account. The law requires that it be combined with a qualified HDHP. The HDHP is designed to protect the insured from the high cost of a catastrophic illness, extended hospitalization, or pay for unusually high health care costs. Because of the high deductible in these insurance plans, the HSA can be set up and used for meeting lower-cost health care expenses before the HDHP deductible is met. These health care expenses must be qualified and allowed under the Internal Revenue Code. HSAs can provide consumers flexibility and choice, along with incentives to become careful consumers. The HSA can be administered by a bank, insurance company, or approved third party. As long as the insured has a qualified HDHP, contributions to the HSA can be made tax-free. Employers are allowed to make tax-free deposits to an employee's HSA. As of 2014, an individual may deposit and save up to \$3,300 per year. For a family up to \$6,550 per year may be deposited and saved. If the HSA owner is age 55 or older, an additional \$1,000 "catch up" contribution can be made into the account for a total of \$4,300 for individuals and \$7,550 for families. Each year, the amount will increase based on the Consumer Price Index (CPI).

Vice Chairman Patrick asked if this resolution was to allow an HCSM in place of an HDHP. **Senator Nuxoll** said this bill is to allow HCSMs to be used with an HSA. A family or a person will be allowed to have a HSA and HCSM to replace a HDHP. The HDHP is currently required by the ACA.

Senator Cameron referred to page 2, line 2, and wanted to know what "this" on line 6 meant. He also wanted to know about line 7 and referred to "support choice", as he was confused by the language. **Senator Nuxoll** explained "this" refers to HCSMs. **Senator Cameron** said the State of Idaho currently has a Medical Savings Account (MSA), which is slightly different than an HSA. The Idaho MSA does not have all of the requirements of the federal government and is state tax deductible. In some cases an HSA may qualify for a federal tax deduction. **Senator Cameron** wanted to know if Senator Nuxoll had considered changing the law allowing HCSMs with the purchase of a MSA. **Senator Nuxoll** said she and Senator Thayn have been working on this item. **Senator Thayn** said his understanding is that MSAs do not require an accompanying health insurance policy. **Senator Cameron** agreed, but said one could interpret that a MSA is designed to go with an HDHP, although not required by state law. He commented that some people use an MSA with an HCSM plan rather than an HSA. **Senator Thayn** stated that in his understanding the reason this was not done already was because this was allowed under state law.

Senator Cameron stated that typically when there is a resolution, there will also be a "now, therefore, we direct this be sent to someone" and he does not see that phrase in this resolution. He said this resolution does not have a direction and wanted to know if he was missing something. **Senator Nuxoll** said Legislative Services drafted this resolution and it is the same as others. She said the resolution could be amended. **Senator Cameron** stated resolutions are not amended. He

commented that from a public policy standpoint, the resolution was fine.

Senator Schmidt said he thought that last year the Committee clearly specified that HCSMs were not insurance and referred to line 41, "citizens who open a HSA would have the ability to choose between participation in a HCSM or the purchase of a HDHP." He stated the resolution is saying the HCSM and an HDHP are comparable in the marketplace. However, Idaho statute says an HCSM and a HDHP are not considered the same. **Senator Nuxoll** said one could be used in place of the other, but a HCSM is not insurance. An HCSM is to be used in place of insurance and this resolution is asking Congress to change legislation so that this can be used in place of an HDHP. **Senator Schmidt** stated there was one HCSM that was grandfathered where participants were excluded from the requirement for having personal insurance. He wanted to know about the growth of the HCSM that was grandfathered. **Senator Nuxoll** said there are three or more HCSMs now, and they have all grown.

TESTIMONY:

Lois Knight, representing herself, testified in support of the resolution. She said she belongs to Samaritan Ministry, which is not insurance. When she had insurance policies in the past they were too costly. She said the deductible under an HCSM is \$350 for an event instead of \$5,000. She said she has belonged to the ministry for five years and has had one claim, and the money comes from individuals.

Senator Cameron wanted to know if someone filed a claim was the amount disbursed among members who then help pay for the claim. **Ms. Knight** said yes. **Senator Cameron** wanted to know if an assigned amount of a \$1,000 contribution towards a claim was tax deductible as a charitable contribution. **Ms. Knight** said it was not. **Senator Cameron** wanted to know if Ms. Knight put money into an HSA and received the tax deduction, would she withdraw money from the HSA to pay the assigned portion of her HCSM. **Ms. Knight** said that was not her understanding, but that it was for other needs. **Senator Cameron** wanted to know if it was the goal that there may be some services that the HCSM would not cover and therefore she would want to be able to participate in an HSA to cover those expenses. **Ms. Knight** said that was her goal.

Senator Schmidt said his understanding is that the HCSM is comprised of people of like religious backgrounds, and he wanted to know if there were certain obligations to maintain annual membership and was anyone excluded. **Ms. Knight** said there is an annual set of questions, but she did not know of anyone who has been excluded.

Jason Robinson, representing himself, testified in support of the resolution. He said the HCSM has helped his family immensely. He said the ACA has doubled premiums for families making middle class wages or has forced them on Medicaid. He said his premiums and deductibles more than tripled. He said he had three ACA plans, which are tied to employment. He could not get insurance through the ACA or through Your Health Idaho because he qualified for the Children's Health Insurance Program (CHIP) and Medicaid. The only real option for those who have fallen through the cracks of the ACA and for people of faith, in particular, is an HCSM. He said the HCSM combined with a HSA plan allows for participants to pay for the medical services that are not covered by an HCSM, such as wellness checkups and other preventative measures. Anything other than a major expense is out-of-pocket. An HSA allows for participants to put tax-deferred monies into an HSA account to pay for those expenses that are not covered by the HCSM. This measure seeks to put those involved in an HCSM on parity. The shared amount is fixed per year, which is adjusted on a one-or-two-year schedule. Participants never pay more per month for someone else's claim.

Casey Haveman, representing himself, testified in support of the resolution. He said he has been a member of the HCSM Samaritans for five years.

Christian Brown, representing himself, testified in support of the resolution. He said he was an attorney and participated with Samaritan Ministries, which covers and pays more. No elective tests are covered, but an HSA can free up money for those expenses. He stated he could write off his shares every month on his taxes.

MOTION: **Senator Martin** moved to send **SCR 125** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Nuxoll will carry the resolution on the floor.

**PASSED
GAVEL:** **Chairman Tippetts** passed the gavel to **Vice Chairman Patrick**.

**DOCKET NO.
38-0501-1401:** **Rules of the Division of Purchasing.** Sarah Hilderbrand, State Purchasing Manager, summarized the proposed rule. **Ms. Hilderbrand** said these proposed rules are the result of hundreds of hours of work by the Division of Purchasing (Division), in concert with the Deputy Attorney General, and other state agencies, through the negotiated rulemaking process. The primary impetus for the proposed changes was the Office of Performance Evaluations' (OPE) study, "Strengthening Contract Management in Idaho," released in January of 2013, which was initially promulgated by a joint resolution. The Division responded to OPE's recommendations with a report which was presented to the Joint Legislative Oversight Committee (JLOC) in January of 2014. At that time, the Division's report to JLOC met with a favorable response, as a number of new forms, templates, and training opportunities were presented; a number of which were instituted at a time when the Division was staffed at around 60 percent capacity for a period of almost two years.

Ms. Hilderbrand stated that buyers and purchasing officers at the Division are some of the best she has ever worked with. They bring a wealth of knowledge from both the private and public sector; and are driven by a desire to provide exemplary service in the best interest of the State and to protect the integrity of the procurement process.

Ms. Hilderbrand said she believes that all of the proposed modifications are a benefit to both the State and to the vendor community. She said the new sections provide additional oversight and independent validation and verification requirements for high dollar service contracts. She said the new sections look very similar to the oversight and validation requirements included in **H 170**, relating to the "Pay for Success for Education Contracts."

Ms. Hilderbrand commented that the Legislature has announced the intent to put an interim committee in place to "undertake a complete study of the purchasing laws of the State of Idaho." She said she looked forward to the Division's participation in this committee. She said she wanted to assist committee members in understanding the application of the current procurement laws and the myriad of procurement-related issues that are addressed on a daily basis. This study is an effort to improve public procurement among the various agencies and throughout the State of Idaho.

Ms. Hilderbrand requested that the following provisions in **Docket No. 38-0501-1401** be accepted: Section 005 (OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS); Section 061 title and subsections 01. and 02. (FORM OF SUBMISSION FOR SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.); Section 071 (PRE-PROPOSAL CONFERENCE) ; Section 072 (PRE-OPENING WITHDRAWAL OR MODIFICATION); Section 074, subsections

01. and 02. (MISTAKES); and Section 112 in whole.

Ms. Hilderbrand asked that all other proposed changes in the docket be rejected, based on the Legislature's proposed resolution to establish an interim committee to strengthen the purchasing laws of the State.

Ms. Hilderbrand explained the changes remove the reference to "telegraph" and allow for electronic signatures for bid submittal, modification and withdrawal. The changes in Sections 072 and 074 clarify the technical procedure for submittal, modification and withdrawal, primarily in terms of timing and location. The addition of Section 112 makes it clear that terms and conditions which violate the Idaho Constitution or Idaho Code will not be effective. She stated the corrections, clarifications and minor additions proposed in these few sections are minimal in nature, help clarify a few processes, and help move the Department into the electronic age. These minor changes will facilitate the process for the State and for vendors and allow an interim committee to have the opportunity to review all of the administrative rules governing purchasing. Dennis Stevenson with the Office of Administrative Rules will work with Legislative Services to ensure that all of the rejected sections are correctly reflected in the concurrent resolution.

MOTION:

Chairman Tippets moved to approve Sections 005, 061, Subsections 01. and .02, 071, 072, 074, Subsections 01. and 02. and Section 112 of **Docket No. 38-0501-1401** and to reject the remainder of the rule. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**PASSED
GAVEL:**

Vice Chairman Patrick passed the gavel back to Chairman Tippets.

H 152:

Licensure of Sign Language Interpreters. **Representative Packer** said that recognizing that sign language interpreters can profoundly affect the lives of the people of the State of Idaho, this bill creates a licensing system and sets qualification standards for those who engage in the practice of sign language interpreting. At least 13 percent of the general population (203,785 Idaho citizens) has a some variety of hearing loss. Of that number, 2.42 percent (34,486 Idaho citizens) experience severe to profound hearing loss and rely on a visual mode of communication. This puts them at a distinct disadvantage because of possible communication of incomplete, incorrect, and unethically delivered information, often by non-qualified interpreters. Ensuring deaf and hard of hearing consumers receive appropriate interpreting services may reduce general threats to the health and safety of this statewide population. Professional interpreter licensing minimizes the liability of hiring entities providing services to deaf consumers. It also ensures equal access to education, the criminal justice system, and health care for deaf children and adults.

There will be no fiscal impact on the State or local funds. The cost of licensing will be borne by licensees and those seeking licenses.

TESTIMONY:

Steven Snow, Executive Director, Council for the Deaf and Hard of Hearing (Council), said the intent of **H 152** is to define a minimum standard for interpreters working in Idaho and to hold people accountable for their work. This bill does not define nor expand the scope of when or where an interpreter is needed. Under the Americans with Disability Act (ADA) many businesses and government agencies are required to provide a qualified interpreter. Unfortunately, most entities have no way to ensure they are meeting this requirement. This bill provides a way for businesses, courts, and entities hiring interpreters to ensure they are receiving the service for which they have paid.

Director Snow said that in testimony before the House Health and Welfare

Committee, citizens shared stories of having numerous medical or legal appointments that were unnecessary, simply because they could not understand the unqualified interpreter who was provided. Overall, the expense of providing interpreters is reduced when information is conveyed accurately the first time. This bill is not intended to penalize people or agencies trying to do the right thing. It does not cover direct communication or for example, a server who knows sign language and is communicating with patrons at the restaurant. It also does not cover incidental communication, including asking a sales person about the difference between models of an appliance, registering to vote, or paying a fine at a county clerk's window. For rural areas, quality interpretation can still be provided through various technologies, and steps are being taken to make this more widely available.

Director Snow stated the Legislature has already taken strides to recognize the importance of quality interpretation, and American Sign Language (ASL) is distinct from English. The Educational Interpreter Act (Title 33, Chapter 13) was enacted in 2006 and took effect in 2009. This law establishes a minimum standard for interpreters working in K-12 settings. This bill has been crafted to support those standards.

Director Snow said this bill does not increase the burden of providing interpreters in the courts, to business, or other agencies. Rather, it provides a mechanism for them to ensure they are receiving the quality of service they believe they are receiving. **Director Snow** explained there are other ways to have access to a sign language interpreter, including video remote interpreting.

In 2007, through two concurrent resolutions, the Legislature first recognized ASL "as a separate and complete language with its own unique grammar and syntax." **SCR 102**, adopted in 2007, clarified that ASL is a foreign language. Further, in a second concurrent resolution, this body recognized that "children who are deaf or hard of hearing benefit from qualified teachers, interpreters and resource personnel who communicate effectively with each child in that child's method of communication."

Director Snow talked about the fake interpreter for Nelson Mandela that was on the news and said that happens to Idahoans every day. He said some children have to sign for their parents. Only 5 to 10 percent of parents can sign at a basic level. Many do not know enough to interpret accurately. He gave several other examples of non-qualified interpreters who have caused problems by giving incorrect information through signing.

Director Snow stated that if this bill passes there will be a temporary shortage of qualified ASL interpreters. However, he pointed out that the pool will expand, as proven in other states that have approved licensed ASL interpreters.

Senator Schmidt and **Director Snow** had a conversation about certification and licensing requirements. **Director Snow** mentioned there are nationally recognized levels of certification. They went on to discuss confidentiality and mandated reporting. **Director Snow** said specific points could be outlined by the Bureau of Occupational Licenses (Bureau).

Senator Cameron wanted to know about the fiscal impact on agencies due to the possible shortage of qualified interpreters. **Director Snow** said that if an entity was already using a licensed interpreter, there has not been an increase in costs. However, if an entity is using an unlicensed interpreter, the costs would increase.

Senator Cameron asked if there was a requirement that an entity would be required to use a licensed interpreter. **Director Snow** replied there is a requirement for those entities that are providing interpreters under the ADA that the interpreter

has to be licensed. There is an exception under the ADA that if someone went to the emergency room, the hospital can use a family member to interpret until an ASL interpreter arrives.

Senator Cameron and **Director Snow** had a conversation about civil and misdemeanor penalties imposed on someone who acts as an ASL interpreter but is not licensed. The process would start with the Bureau receiving a complaint and they would send a letter informing the unlicensed interpreter they were in violation of the law. If the person persisted, then stricter penalties would be imposed. **Senator Cameron** and **Director Snow** talked about someone who was asked to interpret in the case of an emergency. There was no penalty under the rules of the ADA because the ADA would consider what is reasonable and what is not reasonable.

Chairman Tippets referred to page 3, line 8, and said scope of practice is defined, "on and after July 1, 2016, a person who provides interpreting services in a general setting or a Pre-K-12 setting must be licensed", but on page 2, line 17, "general setting" is defined which says interpreting services must be required in the general setting. **Chairman Tippets** read the definition. He wanted to know about the language "and other settings" and the licensing requirement when services are provided for these settings, but pointed out that all of the settings have not been identified. He said he felt that "and other settings" was very broad. He wondered how he would know to which "other settings" this legislation applies. **Director Snow** said that under the ADA, Titles 1, 2 and 3 identify where an interpreter must be provided. Included in those titles are government and public accommodations, regulations for non-profits and what is exempt and what is not. The language does seem broad, but it is because "other settings" are detailed by the ADA. The concern was that if every potential setting that might come up was listed, the legislation would be an inch thick. He said he wanted to make sure the ADA requirements were followed and any loopholes were avoided.

Chairman Tippets referred to page 3, line 20 and wanted to know about the exemptions and said he did not find many. He did not see any exemption for a family member in a business or medical setting or an emergency, and he wanted to know why the ADA provisions would apply and not Idaho statute. **Director Snow** said the exemptions identified in the bill have to do with who is interpreting. The ADA does not provide exemptions for individuals, which is what is being addressed in the bill. The ADA provides exemptions for "settings." He said in terms of using family members, the Department of Justice (DOJ) has clearly said that is not allowed and is illegal, which has nothing to do with a licensure requirement, but has to do with when an interpreter is provided. The DOJ has recognized that in exigent situations where there is an emergency, that may be more reasonable. The scope of when or where an interpreter may be provided is not being changed. Only those who can perform the services are being identified.

Chairman Tippets said on page 6, line 17 referring to a provisional license, he thought the paragraph did not read correctly and something was left out. He read the sentence, "the Board may grant a person who has been granted a provisional sign language interpreter license to practice sign language interpreting upon filing an application with the board and payment of the fee established by board rule." He asked Director Snow to explain the first two lines. **Director Snow** explained that in Idaho there are three categories of interpreters. There are those who are certified interpreters who have already met a minimum standard; there are good interpreters who have the skills, but do not have the credential or documentation; and there are the interpreters who do not have the skill at all. A provisional license would give an interpreter up to three years so that they could take a competency exam to get a credential and a general interpreting license.

Senator Heider wanted to know where out of the 200,000 people in the State of Idaho, would all of the qualified interpreters come from to keep up with the demand. **Director Snow** said that the 200,000 people have some level of hearing loss, including senior citizens who do not use sign language and people who listen to their iPods too loudly and have some hearing loss, so interpreters are not needed for all. The largest percentage do not use sign language interpreters. The group that needs interpreters is approximately 4,000 to 5,000 Idahoans. **Senator Heider** wanted to know if every school has interpreters to handle the student population, including preschoolers referred to in the bill. **Director Snow** said school districts typically identify one school as a magnet school where the deaf program is housed and interpreters are provided.

Vice Chairman Patrick said he was concerned about unintended consequences. He wondered if one "signs", are they committing a misdemeanor because they are interpreting. **Director Snow** said that is not reasonable for someone to be charged with a misdemeanor for interpreting. If one is having a casual conversation, doing some counseling or giving some advice that does not necessarily mean a license is needed.

TESTIMONY:

Fred Birnbaum, Vice President, Idaho Freedom Foundation, testified in opposition to the bill. He said the bill was more restrictive than the ADA. He said a qualified interpreter must be provided, such as at the dentist office, or that would be interpreted as a misdemeanor. He said the fee structure was steep. The penalties in the fee structure would likely drive someone out of the practice of sign language interpretation if they were doing it on a part-time basis or wanted to volunteer. To require everyone to be licensed in such broad settings as outlined in this bill goes beyond the ADA requirements. He said the danger is not potential. Unintended consequences would be created, and he wanted the bill amended.

Clifford Hanks, representing Network Interpreting Service, testified in support of the bill. He said fully qualified licensed professionals should be utilized to broker key threads in the fabric in the lives of the deaf and hard of hearing. When licensed professionals provide their services to members of the public who are deaf, they should be utilizing a fully-qualified person to broker services.

Senator Schmidt wanted to know how many people in Idaho would pursue licensure. **Mr. Hanks** said those who want to work professionally as an interpreter would pursue licensing. He said his company only works with certified interpreters. The impact to his company and the services involved in coordinating, would be minimal.

Senator Heider wanted to know who certifies interpreters. **Mr. Hanks** said interpreters are certified by the Registry of Interpreters for the Deaf, which is a national certifying organization. **Senator Heider** wanted to know if a board was established and met once a year; he thought the board would have to meet many times to certify all interpreters in the State. How would that be accomplished? **Mr. Hanks** said there were approximately 40 to 60 interpreters in the State. **Senator Heider** wanted to know if there were 40 to 60 interpreters that had to be certified. **Mr. Hanks** said that ultimately he hoped there would be more than that. Since they are already certified, the process before the board should not be very complicated.

TESTIMONY:

Michael Henderson, legal counsel, Administrative Office of the Idaho Supreme Court, commented about the court's independent constitutional obligations of access and due process, irrespective of the provisions of this bill. He said this bill was well-intentioned and the court had no opinion. He talked about the constitutional obligations of guaranteed access to the courts for all, due process and the guarantee for an individual to speak at trial. These rights extend to all persons, including those who are non-English speaking and those who are deaf or hard of hearing. The ADA also provides protection and opportunities for the deaf and hard of hearing. Meeting the obligations of these constitutional and statutory provisions is a challenge.

He also talked about Rule 52, the Idaho Supreme Court's policy declaration involving court interpreters. The purpose of the Rule is to secure the rights of persons who because of non-English speaking cultural background or physical impairment are unable to understand or communicate adequately in the courts. The courts strive to use the best interpreters, or a lower level interpreter only for good cause, depending upon availability. In extraordinary circumstances, if none of the levels of interpreters are available and it is necessary to conduct the proceedings before an interpreter is available, the court may find an interpreter who is able to perform the interpretation.

Mr. Henderson said there is a concern about finding licensed interpreters when there is not enough lead time before a proceeding. Some court proceedings must be conducted within tight timelines. He said there is a concern about having enough licensed interpreters. What is clear is the courts will not be able to use a licensed interpreter for everything. Non-licensed interpreters will have to be used on short notice.

Mr. Henderson expressed concerns about the bill. Interpreters should not be liable for prosecution, as they would be under this bill. The fiscal note says there will be no fiscal impact on state or local funds, but in fact, having a licensed sign language interpreter available at every government office will cost money. The true cost should be considered. He said it was necessary to tell the Committee about the effects of this bill.

Senator Schmidt wanted to know how the court dealt with interpreters for other languages. **Mr. Henderson** said the process was the same, but sign language was more challenging. **Senator Schmidt** wanted to know if there was a similar certification requirement for foreign language interpreters. **Mr. Henderson** said there were certificate requirements established within the court system that an individual would have to meet. The court does not always have an interpreter at a master level. **Senator Lakey** asked if there was a certification process for language interpreters, but not a licensure requirement. **Mr. Henderson** said there was no licensure requirement.

Janica Bisharat, Director of Court Management Division, Idaho Supreme Court, said that within the court system there is access to certification exams in 18 different languages through the National Center for State Courts. Each year training is provided for the exams. Individuals can test in each of those languages and become certified. There are languages where no certification exams exist, but the courts belong to a consortium that enables them to draw on interpreter resources.

Alan Wilding, President, Idaho Association of the Deaf, shared his personal story. He had been a teacher for 16 years and holds 4 degrees. He was arrested and charged with felony theft. He did not know why he was arrested and has always maintained his innocence. Because he did not receive the appropriate services and was assigned a non-certified, non-licensed sign language interpreter, there were many miscommunications involved with the court hearings. He thought he was entering a plea deal for a misdemeanor, when in fact, he was charged with a felony. The judge would not allow him to change his plea. He is prohibited from teaching because he has been convicted of a felony. He said this was only one of many stories of injustice.

Representative Packer said people cannot be taught to hear. Certification and licensure is the only available avenue. She stated what the deaf are experiencing has been minimized. Legislation is needed to make sure people have access to services.

MOTION: **Senator Ward-Engelking** moved to send **H 152** to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion.

Senator Heider said he was in favor of the bill, but he did not know how the bill would be implemented for all and said this was a concern. **Senator Schmidt** said he found comfort with the timeline being moved to July 1, 2016, so the rules can be worked out with the courts. **Vice Chairman Patrick** said he would be more comfortable with a little different language, and the bill was not broad enough for exemptions.

ROLL CALL VOTE: **Chairman Tippetts** called for a roll call vote. **Senators Martin, Heider, Lee, Schmidt** and **Ward-Engelking** voted aye. **Senator Lakey, Vice Chairman Patrick** and **Chairman Tippetts** voted nay. Senator Cameron was absent. The motion carried. Senator Ward-Engelking will carry the bill on the floor.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:05 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary

Industrial Administration Fund Cash Analysis

Operating Capital

	Beginning Balance	Revenues	Total Available for Year	Transfers In (Out)	Original Appropriation	Expenditures	Ending Balance
FY 2010	\$2,464,700	\$10,335,600	\$12,800,300	(\$502,400)	\$11,229,700	\$9,854,100	\$2,443,800
FY 2011	\$2,443,800	\$10,291,700	\$12,735,500	(\$471,700)	\$10,868,600	\$9,757,800	\$2,506,000
FY 2012	\$2,506,000	\$11,033,200	\$13,539,200	(\$423,600)	\$10,829,400	\$9,828,700	\$3,286,900
FY 2013	\$3,286,900	\$9,350,000	\$12,636,900	(\$334,200)	\$11,088,300	\$10,680,700	\$1,622,000
FY 2014	\$1,622,000	\$10,946,900	\$12,568,900	\$1,552,200	\$11,311,900	\$10,924,300	\$3,196,800
FY 2015*	\$3,196,800	\$10,705,000	\$13,901,800	(\$313,100)	\$11,689,800	\$11,197,408	\$2,391,293
FY 2016**	\$2,391,293	\$10,710,000	\$13,101,293	(\$313,100)	\$12,004,400	\$11,477,343	\$1,310,850
FY 2017**	\$1,310,850	\$12,063,452	\$13,374,302	\$0	\$12,304,510	\$11,764,276	\$1,610,026
FY 2018**	\$1,610,026	\$12,365,038	\$13,975,064	\$0	\$12,612,123	\$12,058,383	\$1,916,681

*Estimated Revenues and Expenditures from budget submission

**Anticipated Revenues, appropriations, and expenditures growing at a rate of 2.5%, but expiration in FY 2017

Long Term Investments

	Beginning Balance	Transfers In (Out)	Additional Transfer	Ending Balance
FY 2010	\$15,025,700	\$502,400	\$0	\$15,528,100
FY 2011	\$15,528,100	\$471,700	\$0	\$15,999,800
FY 2012	\$15,999,800	\$423,600	\$0	\$16,423,400
FY 2013	\$16,423,400	\$334,200	\$0	\$16,757,600
FY 2014	\$16,757,600	(\$1,552,200)	\$0	\$15,205,400
FY 2015*	\$15,205,400	\$313,100	\$0	\$15,518,500
FY 2016**	\$15,518,500	\$313,100	(\$3,000,000)	\$12,831,600
FY 2017**	\$12,831,600	\$0	\$0	\$12,831,600
FY 2018**	\$12,831,600	\$0	\$0	\$12,831,600

For Cash Flow Purposes, roughly 95% of premium tax revenue is paid in July, August, February, and March.

Industrial Administration Fund Cash Analysis / RS 23875

Operating Capital

	Beginning Balance	Revenues	Total Available for Year	Transfers In (Out)	Original Appropriation	Expenditures	Ending Balance
FY 2010	\$2,464,700	\$10,335,600	\$12,800,300	(\$502,400)	\$11,229,700	\$9,854,100	\$2,443,800
FY 2011	\$2,443,800	\$10,291,700	\$12,735,500	(\$471,700)	\$10,868,600	\$9,757,800	\$2,506,000
FY 2012	\$2,506,000	\$11,033,200	\$13,539,200	(\$423,600)	\$10,829,400	\$9,828,700	\$3,286,900
FY 2013	\$3,286,900	\$9,350,000	\$12,636,900	(\$334,200)	\$11,088,300	\$10,680,700	\$1,622,000
FY 2014	\$1,622,000	\$10,946,900	\$12,568,900	\$1,552,200	\$11,311,900	\$10,924,300	\$3,196,800
FY 2015*	\$3,196,800	\$10,705,000	\$13,901,800	(\$313,100)	\$11,689,800	\$11,197,408	\$2,391,293
FY 2016**	\$2,391,293	\$10,710,000	\$13,101,293	\$0	\$12,004,400	\$11,477,343	\$1,623,950
FY 2017**	\$1,623,950	\$10,977,750	\$12,601,700	\$400,000	\$12,244,488	\$11,764,276	\$1,237,424
FY 2018**	\$1,237,424	\$11,252,194	\$12,489,617	\$600,000	\$12,489,378	\$12,058,383	\$1,031,234

*Estimated Revenues and Expenditures from budget submission

**Anticipated Revenues, appropriations, and expenditures growing at a rate of 2.5%

Long Term Investments

	Beginning Balance	Transfers In (Out)	Additional Transfer	Ending Balance
FY 2010	\$15,025,700	\$502,400	\$0	\$15,528,100
FY 2011	\$15,528,100	\$471,700	\$0	\$15,999,800
FY 2012	\$15,999,800	\$423,600	\$0	\$16,423,400
FY 2013	\$16,423,400	\$334,200	\$0	\$16,757,600
FY 2014	\$16,757,600	(\$1,552,200)	\$0	\$15,205,400
FY 2015*	\$15,205,400	\$313,100	\$0	\$15,518,500
FY 2016**	\$15,518,500	\$0	(\$3,000,000)	\$12,518,500
FY 2017**	\$12,518,500	(\$400,000)	\$0	\$12,118,500
FY 2018**	\$12,118,500	(\$600,000)	\$0	\$11,518,500

For Cash Flow Purposes, roughly 95% of premium tax revenue is paid in July, August, February, and March.

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

1 This bill draft contains confidential and privileged information exempt
2 from disclosure under Section 9-340F(1), Idaho Code. If you have received
3 this message by mistake, please notify us immediately by replying to this
4 message or telephoning the Legislative Services Office at (208) 334-2475.

Moved by _____

Seconded by _____

IN THE SENATE
SENATE AMENDMENT TO S.B. NO. 1168

1 AMENDMENT TO SECTION 1
2 On page 1 of the printed bill, delete lines 15 through 26 and insert:
3 "(1) Commencing July 1, 1993, every surety, other than self-insurers
4 authorized to transact worker's compensation insurance, a sum equal to two
5 and one-half percent (2.5%) of the net premiums written by each respectively
6 on worker's compensation insurance in this state during the preceding six
7 (6) months' period, but in no case less than seventy-five dollars (\$75.00);
8 (2) Each self-insurer, a sum equal to two and one-half percent (2.5%) of
9 the amount of premium such employer who is a self-insurer would be required
10 to pay as premium to the state insurance fund, but in no case less than sev-
11 enty-five dollars (\$75.00);
12 (3) Notwithstanding the provisions of subsections (1) and (2) of this
13 section, for the period January 1, 2012, through December 31, 201520:".

14 CORRECTION TO TITLE
15 On page 1, delete lines 3 and 4 and insert: "TO REVISE A DATE.".

AMENDED AGENDA #2
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Thursday, March 26, 2015

SUBJECT	DESCRIPTION	PRESENTER
	NOTE: MEETING STARTS AT 1:00 P.M.	
MINUTES APPROVAL	Minutes of March 17, 2015	Senator Ward-Engelking
MINUTES APPROVAL	Minutes of March 19, 2015	Senator Heider
HONORING PAGE	Samantha Mooney	Chairman Tippetts
<u>H 182aa</u>	Amending Existing Insurance Law	Tim Olson, Pinnacle Business Group
<u>H 256</u>	Public Works - Irrigation Ditches, Canal Maintenance and Repair Work	Norm Semanko, ID Water Users Association
<u>H 277</u>	Relating to Title Insurance	Lyn Darrington, Idaho Land Title Association

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Tippetts	Sen Heider
Vice Chairman Patrick	Sen Lee
Sen Cameron	Sen Schmidt
Sen Martin	Sen Ward-Engelking
Sen Lakey	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 26, 2015

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Tippetts** called the meeting to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of March 19, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

HONORING OF PAGE: **Chairman Tippetts** honored Page Samantha Mooney. He said the best pages are always assigned to the Committee and Samantha has done an outstanding job. **Samantha Mooney** shared what she learned while being a Senate Page and said she has loved serving on the best committee. She said she was hoping to go into international relations and serve as a Foreign Service Officer. She said she admires the Senators because they try to do everything they can to serve the citizens, and she is honored to be in the page program. **Ms. Mooney** said she applied to the colleges of Grinnell, Iowa; Linfield, Oregon; and Barnard, New York and she was hoping to be accepted by one of them. **Chairman Tippetts** thanked Ms. Mooney, and said she was an exceptional page and the Committee wished her the very best.

H 182AA: **Amending Existing Insurance Law. Tim Olson**, Pinnacle Business Group, representing the Idaho Life and Health Guaranty Association, testified in support of the bill. He said the bill excludes Consumer Operated and Oriented Health Plans (CO-OPS) established under the Affordable Care Act (ACA) from coverage by the Idaho Life and Health Insurance Guaranty Association. CO-OPS are eligible for funding from the federal government to cover costs associated with start-up and operations. The bill also adds wording found in the National Association of Insurance Commissioners (NAIC) Model Life and Health Insurance Guaranty Association Act that permits the guaranty association to exclude from membership entities that are similar to entities excluded by the law.

Based on an analysis of the licensing of the CO-OPS in the various states, the 23 federally-funded CO-OPS are not members of the guaranty associations in roughly half of the states in which they are operating. Even more guaranty associations will find that the CO-OPS in their states are not members according to the NAIC Model Act language that excludes "entities similar to" those already excluded by state guaranty association law. The CO-OP that is operating in Idaho is not a member of the guaranty association in its home state of Montana. It is licensed as a managed care organization in Idaho (making it by default a member of the association) because the licensing classification it has in Montana is not available in Idaho. CO-OPS are not members of the guaranty associations in the neighboring states of Oregon and Nevada.

Mr. Olson said the leadership of the Mountain Health Cooperative operating in

Idaho and the Idaho Department of Insurance (DOI) have been notified of this proposed legislation.

There is no direct impact to the General Fund. However, if a CO-OP were to fail in Idaho, this legislation would result in a savings to the General Fund to the extent insurers would have offset from their premium tax liabilities any guaranty association assessments that would have been made if the CO-OP had been a member of the guaranty association.

Senator Lakey asked Mr. Olson to expound on the federal support and funding for these types of CO-OPS. **Mr. Olson** said that when CO-OPS were developed, they provided federal taxes for set up loans and insolvency loans to operate within the states. They were specifically designed to give the consumer another option of buying insurance. There was approximately \$6 billion initially made available for granting, but the amount has been decreased to less than \$3 billion. No other federally subsidized CO-OPS will be granted admission other than the 23.

Senator Cameron said that there is a CO-OP in Idaho under a restrictive conditional permit, and he wanted to know if Tom Donovan could explain the actions of the DOI with the Montana CO-OP related to the concerns of the DOI. **Tom Donovan**, Acting Director, DOI, said the Montana Health CO-OP based in the State of Montana, applied to the DOI for a certificate of authority as a managed care organization, which is specifically provided for in Chapter 39, Title 41, which includes the ability to write disability insurance. This has been done with other companies as well. In June of last year, new conditions were placed on admission. One condition was placed on the Montana CO-OP; they were required to place an additional \$1.5 million deposit with the DOI for the protection of Idaho policy holders. There was a limit placed on the ability to enter into new contracts or to sell new insurance contracts should the CO-OPS Risk Based Capital (RBC) level fall below 500 percent. This is a filing that companies make annually. Monthly reporting was required in addition to quarterly and annual statements starting in January of 2014. All of these conditions were agreed to by the Montana CO-OP.

Senator Lakey wanted to know if a CO-OP were to get out of the guaranty association these conditions would remain in place or if then would change.

Mr. Donovan said those conditions would remain in place. The term of those conditions is somewhat indefinite, but they are to be in place for a target time of five years. It is indeterminate in the sense that the CO-OP can request from the Director permission to have the conditions released.

MOTION:

Senator Lakey moved to send **H 182aa** to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 256:

Norm Semanko, Idaho Water Users Association (Association), said the purpose of this legislation is to eliminate a duplicative statutory requirement placed on irrigation ditch and canal maintenance and repair work. The provisions of Chapter 12, Title 42, Idaho Code require that such work be done in a manner so as to prevent damage or injury to the property or premises of others. This legislation would eliminate the duplicative requirement placed on canal and ditch maintenance and repair work by Idaho Code § 54-1218. This legislation has no fiscal impact.

Vice Chairman Patrick stated that maintenance is not engineered, so when excavation tracks are left on a lawn, who is liable. **Mr. Semanko** said that is exactly the kind of issue that is governed under Chapter 12, Title 42. The Association can only do what is reasonably necessary for the repair and maintenance work that needs to be done and property cannot be damaged. **Vice Chairman Patrick** said his concern was the word "damage" is subjective. Damage to one person is

different than to another when tracks are left on a lawn near the waterway. To some people that is a lot of damage. **Mr. Semanko** said in exercising the rights and responsibilities of the Association under code to maintain a ditch, if the Association is on the right-of-way, the Association is not responsible. He said the code outlines the types of equipment that are reasonable and necessary to use for the work that needs to be done.

MOTION: **Senator Patrick** moved to send **H 256** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Patrick will carry the bill on the floor.

H 277: **Lyn Darrington**, Idaho Land Title Association (Association), said this legislation clarifies that a title insurer may issue closing or settlement protection to a buyer, borrower or lender who is party to a transaction in which a title policy is issued. This bill is a concept that the underwriters have been working on for some time. It codifies a current business practice that has become an industry standard. This bill addresses the practice of issuing a closing or settlement protection letter. Closing Protection Letters (CPL) have been part of the real estate closing process for many years. Lenders usually require a title underwriter to issue a CPL before a loan is funded during a closing. CPL's protect buyers, borrowers and lenders against theft of closing funds or failure to comply with written closing instructions.

Ms. Darrington said **H 277** includes language that the Idaho Association of Realtors and the Idaho Bankers Association recommended. It also has been reviewed by the DOI. This bill does two things. It codifies the existing practice of issuing CPLs and clarifies that the closing protection letter is part of the title insurance product.

Ms. Darrington referred to page one of the bill. The new language in lines 34-35 adds the CPL to the title insurance product. The bill caps the rate that can be charged for a CPL. All rates are filed with the DOI. She said on page 2, § 41-2705 of the bill talks about the policy forms that must be submitted to the DOI when title insurance policies and rates are filed. The new language in this section adds the CPL to those documents the title insurers file with the Department.

The new section, which appears on page 3, is § 41-2714, which specifically addresses the CPL. Paragraph (1) states that title insurers may issue a CPL and that it will be filed with the DOI. Paragraph (2) speaks to what losses the CPL insures the buyer, borrower and lender against. Paragraph (2)(a) on lines 11 and (2)(b) on line 15 references theft or misappropriation of settlement funds and failure to comply with the written closing instructions. On line 23 of paragraph (3) is language the realtors asked be included. The CPL covers buyers, borrowers and lenders with a single transaction. The Association wanted to make it clear that a CPL is considered one transaction for which a single rate is charged and covers all the parties which includes the buyer, the borrower and the lender. In lines 28-31 the rate must be filed with the DOI when all policies and rates are filed, be the only rate charged for closing protection and not exceed \$25. Section (4) states that only a CPL can provide this type of protection.

And finally, section (5) is language requested by the Bankers Association. It states that a buyer, borrower, lender or a title insurer retains all their respective rights and remedies in connection with these types of losses, except as otherwise provided for in the language of the CPL.

Ms. Darrington said she was not aware of any opposition. The bill codifies an existing business practice that has occurred for many years. This legislation has no fiscal impact.

Ms. Darrington said the DOI has reviewed the bill and wanted to send the bill to the 14th order for amendment due to a grammatical error. She also referred to the use of the words "rate" and "premium" and said the DOI clarified these two words are used synonymously in the insurance code.

Senator Cameron referred to the top of page 3 relating to "a title insurer may issue a closing protection" and wanted to know why that is permissive instead of using the word "shall." **Ms. Darrington** explained that not all lenders require a closing protection.

Chairman Tippetts wanted an explanation of the language on line 20, page 3, "a rate must be charged" and he wanted to know why this was being mandated. **Ms. Darrington** said this becomes part of the title insurance. Title offerings are used to directly compete, so this establishes a ceiling on the charges.

MOTION:

Senator Martin moved to send **H 277** to the floor to the 14th Order for possible amendment. **Senator Heider** seconded the motion.

Senator Cameron explained there is a provision where a typo or insignificant changes to be made to a bill can be done without sending it to the 14th Order. He asked Chairman Tippetts if this could be handled in Committee. **Chairman Tippetts** said he was not able to determine the intent. He referred to the wording "provided for closing". **Senator Martin** said he was willing to amend his motion to a "do pass" recommendation. **Senator Cameron** suggested the bill could be sent to the floor and if needed the bill could be moved into the Amending Order. He said if the bill did not have to be amended and no rule was being violated, he thought it would be acceptable to ask to have the word "in" be inserted, as it was inadvertently left off when drafted. **Chairman Tippetts** stated he would not be uncomfortable with the bill being sent to the floor with the caveat that if ruled by others the change cannot be made, a request could be made to move the bill to the 14th Order.

**SUBSTITUTE
MOTION:**

Senator Martin moved to send **H 277** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Martin will carry the bill on the floor.

**MINUTES
APPROVAL:**

Senator Ward-Engelking moved to approve the Minutes of March 17, 2015. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

THANK YOU:

Chairman Tippetts thanked the Secretary and the Committee for all of their hard work. He said this could be the last meeting of the Committee, subject to the call of the Chair.

ADJOURNED:

There being no further business, **Chairman Tippetts** adjourned the meeting at 1:42 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary